

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

PARENTS, FAMILIES, AND)
FRIENDS OF LESBIANS AND)
GAYS, INC., et al.,) No. 11-04212-CV-C-NKL
) October 27, 2011
Plaintiffs,) Jefferson City, Missouri
) CIVIL
V.)
)
CAMDENTON R-III SCHOOL)
DISTRICT, et al.,)

Defendants.

* REDACTED *

TRANSCRIPT OF PRELIMINARY INJUNCTION HEARING

BEFORE THE HONORABLE NANETTE K. LAUGHREY
UNITED STATES DISTRICT JUDGE

Proceedings recorded by electronic stenography
Transcript produced by computer

Kathleen M. Wirt, RDR, CRR
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OCTOBER 27, 2011

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THE COURT: Good morning, everyone.

MR. MICKES: Good morning.

THE COURT: This is the matter of Parents, Families,
etc., versus Camdenton School District, Case No. 11-4212.

I'd like the parties to introduce themselves. First
for the plaintiff.

MR. ROTHERT: Your Honor, Anthony Rothert for the
plaintiffs.

MR. BLOCK: Joshua Block for the plaintiffs.

MS. COOPER: Leslie Cooper for plaintiffs.

MS. MANGER: Allison Manger for the plaintiffs.

MR. FINK: Jeff Fink for the plaintiffs.

THE COURT: And for defendants?

MR. MICKES: Tom Mickes for Camdenton School
District; my colleague, Betsy Kruse, for the school district;
and our client, Tom Hadfield.

THE COURT: Welcome all. I have set aside three
hours for the hearing. How long does plaintiff expect?

MR. ROTHERT: Our direct evidence is about one hour
and ten minutes, and we'd like to have 15 minutes to 20 minutes
for argument if time permits.

THE COURT: Absolutely.

MR. MICKES: Your Honor, on direct evidence we have

1 two short witnesses. I would expect less than an hour.

2 THE COURT: All right. Good. It sounds like we can
3 get it done in the time we have. I will permit plaintiff to
4 begin.

5 MR. ROTHERT: Your Honor, we would like to exclude
6 any witnesses.

7 THE COURT: And there was no opposition by the
8 defendants, so you may go ahead and exclude your witnesses.
9 And you may call your first witness.

10 MS. MANGER: Your Honor, plaintiffs call Dr. Barbara
11 Stripling.

12 - - -

13 BARBARA STRIPLING,
14 being first duly sworn by the courtroom deputy, testified as
15 follows:

16 - - -

17 DIRECT EXAMINATION

18 By Ms. Manger:

19 Q. Good morning, Dr. Stripling.

20 A. Good morning.

21 Q. Please state your name for the record.

22 A. Barbara K. Stripling.

23 Q. Dr. Stripling, what is your professional background?

24 A. I have been a school librarian for over 35 years. I
25 spent 20 years as a practicing librarian in Fayetteville,

1 Arkansas; and then I've been a District Director of Libraries
2 in Tennessee; and now in New York City, I'm Director of School
3 Library Services in New York City.

4 Q. Do you have experience dealing with internet filtering
5 in the context of school libraries?

6 A. Yes, in a couple of contexts. First of all, certainly
7 in my position now, I have to provide guidance to individual
8 librarians and structures so that individual librarians can
9 deal with the internet and with the way that it is implemented
10 in their schools.

11 I also have a responsibility district wide because
12 it's important for me to have a relationship with the
13 instructional technology people who maintain the filtering
14 system. And we look at the categories of the criteria that are
15 used. And I work hard to make sure that it is implemented in
16 an equitable way and that students have the most access
17 possible.

18 Q. Dr. Stripling, I'm showing you what's been marked as
19 Plaintiffs' Exhibit P1. Do you recognize this document?

20 A. Yes. It's my resume.

21 Q. Did you draft this document?

22 A. I did.

23 Q. And is Exhibit P1 a true and correct copy of your
24 current resume?

25 A. Yes, it is.

1 MS. MANGER: Your Honor, plaintiffs move that
2 Exhibit P1 be admitted into evidence.

3 MR. MICKES: No objection.

4 THE COURT: It's admitted.

5 (Plaintiffs' Exhibit P1 was admitted into evidence.)

6 BY MS. MANGER:

7 Q. Dr. Stripling, I'm showing you what's been marked as
8 Exhibit P2. Do you recognize this document?

9 A. Yes, I do. It's the opinion I wrote.

10 Q. And did you draft this document?

11 A. I did.

12 Q. Is this a true and accurate copy of your declaration?

13 A. Yes.

14 Q. And is the information in this declaration true and
15 correct to the best of your knowledge?

16 A. Yes.

17 MS. MANGER: Your Honor, plaintiffs move that
18 Exhibit P2 be admitted into evidence.

19 THE COURT: Any objection?

20 MR. MICKES: No objection.

21 THE COURT: I'm sorry?

22 MR. MICKES: No objection, Your Honor.

23 THE COURT: All right. Thank you. It's admitted.

24 (Plaintiffs' Exhibit P2 was admitted into evidence.)

25 BY MS. MANGER:

1 Q. Dr. Stripling, what were you asked to do in this case?

2 A. I was asked to render an opinion about URL Blacklist in
3 comparison to professional library standards.

4 Q. What did you conclude?

5 A. I concluded that URL Blacklist does not comply with
6 professional standards in librarianship. There are several
7 issues that actually are very much in conflict with the way
8 that we maintain professional standards.

9 First of all, it's important anytime a collection is
10 developed to have criteria, very clear criteria for the
11 materials that we make available to students. And those
12 include things like accuracy and free from bias, age
13 appropriateness, and being up to date. I could find no clear
14 criteria in URL Blacklist for the way that websites were
15 categorized.

16 And a second piece that's really important in
17 evaluating material is the credibility, the authority of the
18 source. It's important to be able to look at the, who created
19 the material and determine if that person has actual
20 credibility and authority. I could find no people behind URL
21 Blacklist, nor could I find the qualifications of whoever, the
22 people who were making the judgments.

23 And the third piece that I found that did not comply
24 with professional standards was that it's very important for
25 librarians to maintain a neutral viewpoint stance, that it is

1 our responsibility to seek and make available materials on all
2 viewpoints, not just one side of an issue or one or two sides
3 of an issue, and I found that URL Blacklist was not value
4 neutral, was not viewpoint neutral.

5 Q. Dr. Stripling, in the course of your work in this case,
6 did you consider the district's claim that it has a policy by
7 which students can anonymously request that specific websites
8 be unblocked on an individual basis?

9 A. Yes, I was asked -- I did know that, uh-huh.

10 Q. Did you reach any conclusions?

11 A. In my opinion, that's not a viable solution for
12 students. In the first place, you can't know what you don't
13 know. Students don't know what sites are available if they're
14 blocked. So a student seeking information on anything, if it's
15 not there and they have no access to it, they have no way of
16 knowing what they might ask to be unblocked.

17 The second piece, and this is actually maybe more
18 troubling to me, is the stigmatizing effect that it has when
19 someone has to ask for access to information that he has every
20 right to have access to. I think that even if it's anonymous
21 that still the student feels stigmatized, that he's less than
22 worthy, and the information that he's seeking is less than
23 worthy.

24 And the third piece that I think shows that this is
25 not a solution is that there's actually a subtle nonexplicit,

1 but an effect on the whole school community. I think that all
2 students need to confront various ideas and develop the skills
3 to evaluate different perspectives. If they never have the
4 opportunity to see alternative viewpoints, they're not going to
5 develop the evaluation skills that they need for the rest of
6 their lives.

7 MS. MANGER: Your Honor, no further questions at
8 this time.

9 THE COURT: Cross-examination?

10 - - -

11 CROSS-EXAMINATION

12 By Mr. Mickes:

13 Q. Dr. Stripling, your testimony, I believe, dealt with
14 concerns that you had about the URL Blacklist system?

15 A. Yes.

16 Q. And during the course of your preparation for this
17 case, did you have an opportunity to examine the filtering
18 system at Camdenton School District?

19 A. I looked at URL Blacklist.

20 Q. Okay. But did you make any attempt to determine what
21 kind of filtering system was used at Camdenton?

22 A. I have no access, no.

23 Q. Have you been to Camdenton School District?

24 A. No, I have not.

25 Q. Have you talked to the technology director?

1 A. No, I have not.

2 Q. Would it surprise you, Dr. Stripling, to know that the
3 Camden School District uses a custom filtering system and
4 that URL is merely a backup to that? You didn't know that?

5 A. I think I did know that. But it wouldn't surprise me,
6 no.

7 Q. What was the nature of the district-created customized
8 filtering network?

9 A. I'm sorry, what is the question?

10 Q. Yes. I asked you how -- if you knew, how the
11 customized filtering system at Camden School District, how
12 it operated.

13 A. No.

14 Q. Okay. So you don't have any idea how that worked?

15 A. No, I was asked to look at URL Blacklist.

16 Q. So your observation was based on URL Blacklist?

17 A. Yes.

18 Q. And if that wasn't the entire program that the school
19 district used, then your testimony would be somewhat
20 questionable?

21 A. No, I don't think so.

22 Q. So you can testify about a program, a customized
23 program that you've never seen and you don't know how it
24 operates?

25 A. Well, it is important anytime that you have a filtering

1 system that there be a structure in place that provides the
2 basic foundation of good collection development. And when
3 materials are overcategorized or categorize -- miscategorized,
4 then every time that a district downloaded all of the URL
5 Blacklist categories, they would have to change each individual
6 piece of the, each individual website.

7 Now, websites change daily, and so I would suspect,
8 don't know, but would suspect that those are not assessed daily
9 in order to counter all of the negative effects of URL
10 Blacklist.

11 Q. When you stated, testified that you would assume that
12 it wasn't assessed daily, you don't know that for a fact, do
13 you?

14 A. No.

15 Q. And --

16 A. I do know that there are thousands, hundreds of
17 thousands of websites, and it is not humanly possible to assess
18 them daily.

19 Q. Exactly. Exactly.

20 A. And so if something is miscategorized on the front end,
21 then you have a very difficult problem that you can't overcome
22 by human power to assess the websites. You have to have a good
23 structure in the first place.

24 Q. And you don't know what the structure was at Camdenton,
25 do you?

1 A. I know the structure of URL Blacklist.

2 Q. But you don't know the structure at Camden¹ School
3 District.

4 A. No, I know the structure of URL Blacklist, yes.

5 Q. But my representation to you, and we'll present
6 testimony that that's not the system that's used at Camden¹.
7 Okay. Now, you also testified --

8 THE COURT: Let me clarify because maybe I've really
9 missed something. You don't use URL Blacklist at all?

10 MR. MICKES: We --

11 THE COURT: Because we could save a lot of time
12 here.

13 MR. MICKES: Yeah. We use a system, Your Honor,
14 that was developed by the school district back in 2010. It's a
15 customized system.

16 THE COURT: Does it have anything to do with URL
17 Blacklist? If not, let's talk about --

18 MR. MICKES: It does this way, Your Honor. They
19 have their own customized blacklist and whitelist, things that
20 are perfectly fine and anybody can have them and things that
21 are not. If they're on either one of those customized lists,
22 they never see URL. The only way URL would ever come into play
23 was that if it wasn't on the customized whitelist, it wasn't on
24 the customized blacklist, then it would go through the system.
25 The customized system is --

1 THE COURT: We'll get to that. I just want to know,
2 I'm confused and it seems to me you're saying there is some
3 component of URL Blacklist --

4 MR. MICKES: There is some component to it, Your
5 Honor.

6 THE COURT: That's relevant to Camden School
7 District.

8 MR. MICKES: Yes, there is.

9 THE COURT: All right. Go ahead.

10 BY MR. MICKES:

11 Q. And finally, Dr. Stripling, you talked about the
12 stigmatizing effect --

13 A. Uh-huh.

14 Q. -- that this would have. And are you aware of the way
15 that students and faculty can unblock a site at Camden
16 School District?

17 A. I understand that it's anonymous.

18 Q. Have you looked at the policy?

19 A. No.

20 Q. Have you looked at the computer structure to see how
21 that works?

22 A. No.

23 Q. Okay. And are you aware that the student doesn't have
24 to give a name?

25 A. That's what anonymous means, right.

1 Q. Well, sometimes anonymous means using a different name.
2 It doesn't necessarily mean no name.

3 A. Okay.

4 Q. Are you aware that students can give a name or give a
5 symbol?

6 A. Okay.

7 Q. But you're not aware of that?

8 A. No.

9 Q. And are you aware that the student, if a student wants
10 to unblock a site and he hits, he or she hits that site, the
11 directions of how to do that will pop up immediately; are you
12 aware of that?

13 A. Okay. That still doesn't address the problems that I
14 have.

15 Q. Are you aware of that?

16 A. No.

17 Q. And secondly, are you aware that there's an alternative
18 that they could make a request to the superintendent to have a
19 site unblocked and with an appeal to the board? Are you aware
20 of that?

21 A. In my -- would you like my opinion?

22 Q. I would like an answer to the question --

23 A. I do have an opinion.

24 Q. -- and then you can give me an opinion, if you want.

25 A. I'm not aware.

1 Q. And are you aware of how many sites that have been
2 unblocked by the district's unblocking system since 2004?

3 A. No.

4 Q. And are you aware of the number of --

5 THE COURT: Are we going to go through the evidence
6 that you're going to put on later?

7 MR. MICKES: Well, what I'm trying to do, Your
8 Honor, is this witness, expert witness has offered lots of
9 opinions that had nothing to do with Camdenton.

10 THE COURT: She has talked about Blacklist. I'm not
11 going to take it for any more than what she's talked about, but
12 I will hold you to your share of the time if what you're doing
13 is giving me a prelude of what the evidence is going to be.

14 MR. MICKES: I apologize, Your Honor. I was just
15 trying to establish that the witness doesn't have the practical
16 knowledge. That was it.

17 THE COURT: About this. I understand now.

18 BY MR. MICKES:

19 Q. So in conclusion, Dr. Stripling, you have not examined
20 the Camdenton system to see what role, if any, URL Blacklist
21 plays in that.

22 A. I have not examined Camdenton School District.

23 Q. And you have not examined the means of unblocking
24 sites.

25 A. I have stated my opinion about the stigmatizing effect

1 of having to ask for a site that you have every right to have
2 access to that information, having to ask to have that
3 unblocked.

4 Q. But have you checked at Camdenton to see their method
5 for unblocking?

6 A. But by its very nature, having to request that it be
7 unblocked is a stigmatizing thing for young people.

8 Q. So what you're saying is that all sites should be
9 unblocked, then; otherwise it would be stigmatizing to ask for
10 a block to be unblocked?

11 A. Well, I'm not going to go down that road. I wouldn't
12 say everything.

13 MR. MICKES: Thank you very much.

14 THE COURT: Redirect?

15 MS. MANGER: No, Your Honor.

16 THE COURT: All right. Thank you very much. You
17 may step down. And you may call your next witness.

18 - - -

19 DAVID HINKLE,
20 being first duly sworn by the courtroom deputy, testified as
21 follows:

22 - - -

23 DIRECT EXAMINATION

24 By Mr. Fink:

25 Q. Would you please state your name?

1 A. David Hinkle.

2 Q. And Mr. Hinkle, where do you live?

3 A. I live in Davenport, Iowa.

4 Q. What do you do for a living?

5 A. I'm a software developer for a company called
6 CIPAFilter.

7 Q. How long have you been a software developer?

8 A. I've been a software developer for 16 years.

9 Q. What kinds of software do you develop?

10 A. I develop filtering software, internet filtering
11 software for schools.

12 Q. You say you work for a company called CIPAFilter; is
13 that correct?

14 A. Yes, I do.

15 Q. What is the formal name of the company?

16 A. Formal name of the company is DerbyTech, Incorporated.

17 Q. Where is CIPAFilter located?

18 A. CIPAFilter is located in East Moline, Illinois.

19 Q. How long have you worked for CIPAFilter?

20 A. I've worked for CIPAFilter for over ten years.

21 Q. Can you briefly summarize, what's the business of
22 CIPAFilter, what does it do?

23 A. CIPAFilter is an internet filtering device. We sell
24 these devices to schools and libraries. The devices are used
25 to block sexually explicit content and to keep students on

1 task.

2 Q. Were you involved in developing the CIPAFilter?

3 A. Yes, I pitched the original idea of CIPAFilter to the
4 owner of the company.

5 Q. Who developed the CIPAFilter?

6 A. I did.

7 Q. When was the CIPAFilter developed?

8 A. CIPAFilter was developed in 1999.

9 Q. Just to back up for the benefit of the judge, CIPA, is
10 that spelled C-I-P-A?

11 A. Yes, it is.

12 Q. Is it an acronym?

13 A. Yes, it is.

14 Q. And the name CIPA, where does that come from?

15 A. It comes from the Child Internet Protection Act that
16 the CIPAFilter was designed to enforce.

17 Q. Why did you develop the CIPAFilter?

18 A. I developed the CIPAFilter because at the time the CIPA
19 law was passed, there were no secular filters on the market
20 that I was aware of. All of the filtering devices and software
21 were designed for a niche or religious market.

22 Q. And who are CIPAFilter's customers?

23 A. CIPAFilter's customers are primarily K through 12
24 institutions.

25 Q. School districts?

1 A. Yes.

2 Q. Where are these school districts located?

3 A. These school districts are located all around the
4 country.

5 Q. About how many school districts use the CIPAFilter?

6 A. About a thousand schools.

7 Q. Let me ask you next about how internet filtering, in
8 general how it works. Can you explain to the judge how
9 internet filtering works?

10 A. In general, there's two ways internet filtering is
11 performed. The first is with a blacklist, and the second is
12 with some sort of realtime assessment.

13 Blacklist-based filtering is the idea of evaluating
14 large numbers of websites and cataloging them by category so
15 that school administrators can later determine what categories
16 to turn on and off.

17 Realtime assessment is the evaluation of internet
18 traffic as it's accessed by the students to determine whether
19 it appears to be inappropriate.

20 Q. So there's basically two types of approaches to
21 internet filtering; is that correct?

22 A. Yes, sir.

23 Q. One you mentioned is realtime assessment, and that's
24 looking at websites as they're accessed to determine whether
25 they contain bad content?

1 A. Yes, sir.

2 Q. And the other you mentioned was blacklist; is that
3 correct?

4 A. Yes.

5 Q. Does the blacklist use categories of websites?

6 A. Yes, it does.

7 Q. And how are websites categorized in a blacklist system,
8 what's the process?

9 A. The best process to categorize websites for a blacklist
10 is to have real humans look at the websites and determine what
11 category they should belong to according to a written policy.

12 Q. So is it ultimately a human being who decides how to
13 categorize each particular website?

14 A. That's the best way to do it.

15 Q. Is that the way blacklists typically work?

16 A. Yes.

17 Q. And you discussed your company and your internet
18 filter, the CIPAFilter. Are there other reputable and
19 effective internet filtering products that are available to
20 school districts?

21 A. Yes, there are.

22 Q. And the CIPAFilter, about how much does that cost for a
23 school district to use?

24 A. CIPAFilter costs about \$1600 for a small school
25 district to buy, and about \$600 a year.

1 Q. Are you familiar with the prices that your competitors
2 charge for their filters?

3 A. They're competitive with us.

4 Q. Let's talk about URL Blacklist for a little bit. First
5 of all, are you familiar with URL Blacklist?

6 A. Yes, I am.

7 Q. Can you explain what URL Blacklist is?

8 A. URL Blacklist is a group of categories that are
9 publicly available on the internet. They can be downloaded for
10 free, and the author asks for a donation if you're planning on
11 using them consistently.

12 Q. So is URL Blacklist, is that one of these blacklists
13 that we've been talking about?

14 A. Yes, it is.

15 Q. Where is URL Blacklist found?

16 A. URL Blacklist is found at URLBlacklist.com.

17 Q. Mr. Hinkle, I've handed you what we've marked as
18 Exhibit P5. Can you identify what that document is?

19 A. This document is a copy of the URLBlacklist.com
20 website.

21 Q. And is Exhibit P5, does that contain the web pages
22 found at URLBlacklist.com?

23 A. Yes, it does.

24 MR. FINK: Your Honor, I move for the admission of
25 Exhibit P5.

1 THE COURT: Any objection?

2 MR. MICKES: No objection.

3 THE COURT: P5 is admitted.

4 (Plaintiffs' Exhibit P5 was admitted into evidence.)

5 BY MR. FINK:

6 Q. From these web pages in Exhibit P5, were you able to
7 determine who operates URL Blacklist?

8 A. No, I was not.

9 Q. Can you tell where URL Blacklist is even operated from?

10 A. No, you cannot.

11 Q. Is there any office location for URL Blacklist?

12 A. No, there is not.

13 Q. How about a phone number?

14 A. No phone number is available.

15 Q. Let me contrast that. Was CIPAFilter -- I assume you
16 have a web page, CIPAFilter.com?

17 A. Yes, we do.

18 Q. If I go to your web page, can I find an office
19 location?

20 A. Yes, you can.

21 Q. Can I find a phone number where I can get ahold of you?

22 A. Yes, absolutely.

23 Q. Have you done any internet research to find out, figure
24 out who exactly operates URL Blacklist?

25 A. Yes, I have.

1 Q. What did you do?

2 A. I accessed the internet name database through a Whois
3 search to determine who has registered URLBlacklist.com and who
4 is responsible for the domain name.

5 Q. You mentioned Whois. What is Whois?

6 A. Whois is an interface to the back-end database that's
7 used to control internet domain names. Every domain name such
8 as URLBlacklist.com has to be registered with central
9 authorities in order to be available on the internet, and the
10 Whois search gives us access to that data.

11 Q. So Whois will tell you who the owner of a domain name
12 is?

13 A. Yes, sir.

14 Q. Mr. Hinkle, is Whois a reliable source to go to find
15 out, if you wanted to find out who owns a domain name?

16 A. Yes, absolutely. It is the only place to go to find
17 out who owns a domain name.

18 Q. And I've handed you what we've marked as Exhibit P13.
19 Can you identify what that is for us?

20 A. This is the Whois lookup of the domain
21 URLBlacklist.com.

22 Q. And what did you learn about URL Blacklist from Whois?

23 A. I learned that the URLBlacklist.com website is
24 registered to a pseudonym under the name of Dr. Guardian and
25 this person lives in the United Kingdom.

1 Q. And is this so-called Dr. Guardian, is he or she
2 identified on page 3 of Exhibit P13?

3 A. By his pseudonym, yes.

4 Q. And the address given for Dr. Guardian is what?

5 A. 49 Lipizzaner Fields/Whiteley; ZIP Code, P015 7BH;
6 city, Fareham; country, United Kingdom.

7 Q. Did you do any research to see what kind of address
8 that is?

9 A. Yes, I put it into Google maps and looked at the
10 resulting map.

11 Q. What did it appear to be?

12 A. It appeared to be a residential address.

13 Q. Let's go back to Exhibit P5, if we could.

14 MR. FINK: Let me step back. Your Honor, I would
15 move for the admission of Exhibit P13.

16 MR. MICKES: No objection.

17 THE COURT: It's admitted.

18 (Plaintiffs' Exhibit P13 was admitted into evidence.)

19 BY MR. FINK:

20 Q. Let's go back to Exhibit P5 if we could. This is the
21 web pages for URLBlacklist.com. I want to look at the home
22 page, and right at the top in the upper left-hand corner
23 there's a section that says about. Do you see that?

24 A. Yes, I do.

25 Q. And right under that, does it say, quote, "This is a

1 commercial managed URL Blacklist service. The bulk of the
2 entries are downloaded from various free sites." Do you see
3 that?

4 A. Yes, I do.

5 Q. What do you understand those statements to mean?

6 A. I understand the statement to mean that the author
7 collates various free listings for use in his product.

8 THE COURT: Say it again. I don't understand it.

9 THE WITNESS: I understand it to mean that the
10 author is actually going out to other services that have
11 various listings of websites and putting them together to make
12 his listing of websites.

13 BY MR. FINK:

14 Q. So is it your understanding that URL Blacklist compiles
15 its blacklist from other blacklists?

16 A. That's my understanding, yes.

17 Q. And there's reference in URL Blacklist on the home page
18 here that this blacklist is downloaded from various free sites.
19 Does the URL Blacklist site identify any of these various free
20 sites?

21 A. It does identify one. It identifies a site called
22 dmoz.org.

23 Q. Dmoz.org, does that relay a blacklist?

24 A. No, dmoz.org is not a blacklist. It's a collection of
25 the most useful informational websites on the internet.

1 Q. So other than dmoz.org, does URLBlacklist.com identify
2 any of the free sites from which it draws upon to get its
3 blacklist?

4 A. No, it does not.

5 Q. So is it fair to say that for all we know, the free
6 sites that URL Blacklist draws upon could be operated by
7 organizations opposed to gay rights?

8 A. Yes.

9 MR. MICKES: I'm going to object to that, Your
10 Honor, it's pure speculation.

11 THE COURT: All right. He answered it. It is pure
12 speculation, and I will treat it as such.

13 BY MR. FINK:

14 Q. It's fair to say we have no idea where URL Blacklist
15 gets its blacklist from; is that correct?

16 A. Yes, absolutely.

17 Q. Does URL Blacklist have categories of websites?

18 A. Yes, it does.

19 Q. And are those categories listed on the URLBlacklist.com
20 website?

21 A. Yes, they are.

22 Q. Do we see that in Exhibit P5?

23 A. Looks like page 5 the list of categories start.

24 Q. That's the fifth page of Exhibit P5?

25 A. Yes.

1 Q. Actually sixth page, isn't it, if you count them. And
2 the title of the page where the categories, is that at the
3 bottom, it says URLBlacklist.com equals download, is that the
4 right page you're talking about?

5 A. Yes, sir.

6 Q. That's where the categories begin?

7 A. Yes, sir.

8 Q. And does it carry over to the next two pages?

9 A. Yes, sir.

10 Q. And so there's a listing of the categories and a
11 description of what each category is supposed to contain?

12 A. Absolutely.

13 Q. And in one of the categories on there, we look at the
14 third page of the categories, there's one called sexuality. Do
15 you see that?

16 A. Yes, I do.

17 Q. And a description for sexuality is, quote, "Sites
18 dedicated to sexuality, possibly including adult material." Do
19 you see that?

20 A. Yes, I do.

21 Q. Is it common for filtering companies to have a category
22 that, quote, possibly includes adult material?

23 A. No, that's not common. Generally categories either
24 include adult material or they do not.

25 Q. In your opinion does it make sense to categorize

1 websites that contain adult material with websites that don't
2 contain adult material?

3 A. No, that doesn't make sense. Our customers want to
4 block sexually explicit material by allowing as much
5 informational resources as possible. Mixing those two types of
6 material together creates a situation where you can't possibly
7 serve the customer.

8 Q. Is it your understanding that the Camden-ton School
9 District uses URL Blacklist in its internet filtering?

10 A. Yes, that is my understanding.

11 Q. Mr. Hinkle, I've handed you what's been marked as
12 Exhibit P21, and I want to focus first on the cover letter in
13 Exhibit P21. Does that appear to be a letter dated June 6,
14 2011?

15 A. Yes, it does.

16 Q. And it appears to be from the Mickes Goldman O'Toole
17 law firm?

18 A. Yes, it does.

19 Q. And that's the attorneys for the defendants, correct?

20 A. That is my understanding.

21 Q. If we look at the second page of this letter, Exhibit
22 P21, at the top, paragraph 2, do you see where it says, quote,
23 "The district's network administrator customized and maintains
24 the district's filtering system based upon the automated
25 download service from <http://URLBlacklist.com>," end quote. Do

1 you see that?

2 A. Yes, I do.

3 Q. What do you understand that to mean?

4 A. I understand that to mean that the network
5 administrator has installed a piece of software on his network
6 that allows them to install the URL Blacklist blacklists into
7 their network and use that to do filtering.

8 Q. And how does a school district use URL Blacklist if it
9 so chooses?

10 A. URL Blacklist is just a blacklist, basically a
11 categorization of websites. So in addition to the blacklist,
12 you need software to implement the blacklist and some sort of
13 server service. The most common software to use is SquidGuard
14 or DansGuardian. The software is installed and inside a proxy
15 server called squid and allows administrators to turn various
16 categories on and off as you control the flow of information on
17 the network.

18 Q. Let's talk a little bit more about the sexuality
19 category in URL Blacklist. Have you seen a download of the
20 websites that are categorized as, quote, sexuality in URL
21 Blacklist?

22 A. Yes, I have.

23 Q. In fact, is that listing included in Exhibit P21?

24 A. I believe so.

25 MR. FINK: Your Honor, I would offer into evidence

1 Exhibit P21.

2 MR. MICKES: No objection.

3 THE COURT: It's admitted.

4 (Plaintiffs' Exhibit P21 was admitted into evidence.)

5 BY MR. FINK:

6 Q. Now, have you seen in the Amended Complaint how the
7 plaintiffs have listed approximately 41 websites that are
8 supportive of LGBT people, lesbians, gays, bisexuals, and
9 transgender? Have you seen the listing?

10 A. Yes, I have.

11 Q. Have you checked to see whether those 41 websites that
12 are supportive of LGBT people are included in the sexuality
13 category and URL Blacklist?

14 A. Yes, I have.

15 Q. And what did you discover?

16 A. I discovered that all 41 of those websites are included
17 in the sexuality category of URL Blacklist.

18 Q. So if the school district blocks any websites that are
19 categorized as sexuality by URL Blacklist, is it fair to say
20 that those 41 websites would not be accessible at the school
21 district unless they are specifically removed by the network
22 administrator?

23 A. Yes, that's absolutely true.

24 Q. Did you check whether CIPAFilter, your product, blocks
25 any of these 41 websites that are supportive of LGBT people?

1 A. Yes, I did.

2 Q. And what did you discover?

3 A. CIPAFilter does not block any of these websites.

4 Q. And did you check how some of your competitors
5 categorize these 41 websites?

6 A. Yes, I did. I checked competitors M86, Lightspeed,
7 Netsweeper, and Blue Coat, and none of these competitors block
8 any of the websites in the list of 41 pro-LGBT websites.

9 Q. Mr. Hinkle, I've handed you what we've marked as
10 Exhibit P51. Can you identify what that is for us?

11 A. Yes, sir. It's my evaluation of the 41 pro-LGBT
12 websites.

13 Q. And these are the 41 sites listed in paragraph 47 of
14 the Amended Complaint?

15 A. Yes, sir, I believe so.

16 Q. And the first column, that's how URL Blacklist
17 categorizes each of these sites?

18 A. Yes, sir.

19 Q. And how does URL Blacklist categorize each one?

20 A. URL Blacklist categorizes all of these websites as
21 sexuality.

22 Q. And then the next three internet filters that you have
23 on this chart are Lightspeed, Blue Coat, and M86; is that
24 correct?

25 A. Yes, sir.

1 Q. You mentioned that you also looked at Netsweeper. Is
2 there a problem in looking at Netsweeper?

3 A. We had some problems using Netsweeper's publicly
4 available data.

5 Q. What was the problem with using Netsweeper.

6 A. When we would put the websites into Netsweeper
7 sometimes it would change the results that are reported back.
8 That was not the case with these 41 websites, however. These
9 41 websites were never blocked by Netsweeper.

10 Q. And so looking at the other internet filters on Exhibit
11 51 -- Lightspeed, Blue Coat, and M86 -- do any of these
12 categorize any of the 41 supportive sites as, quote, sexuality?

13 A. No, they do not.

14 Q. Do any of them categorize them as adult sites?

15 A. No, they do not.

16 Q. Let's look at Lightspeed. The first website there that
17 we've had to look at was affirmation.org, and Lightspeed
18 classified that as, quote, G, family, religion. Do you know
19 what G means?

20 A. Lightspeed uses a rating system like movies, so G means
21 for general audiences.

22 Q. So the Lightspeed internet filter categorized
23 affirmation.org and gave it a rating of G?

24 A. Yes, sir.

25 Q. Just like a G movie.

1 A. Yes, sir.

2 Q. And it also gave a G rating to several of the other
3 websites; is that correct?

4 A. Yes, sir.

5 Q. And there are a few, to be fair, where it gave a PG
6 rating. Is that similar to a PG rating of a movie?

7 A. Yes, sir.

8 Q. Does Lightspeed also use ratings like R and X?

9 A. Yes, it does.

10 Q. And did it give an R or X to any of these 41 supportive
11 websites?

12 A. No, it does not.

13 MR. FINK: Your Honor, I offer into evidence Exhibit
14 P51.

15 MR. MICKES: No objection.

16 THE COURT: It's admitted.

17 (Plaintiffs' Exhibit P51 was admitted into evidence.)

18 BY MR. FINK:

19 Q. And you're also familiar in the Complaint that there
20 have been listed a number of websites that are considered anti
21 or nonsupportive of LGBT people, have you seen those?

22 A. Yes, I have.

23 Q. Those lists. And do you see how URL Blacklist
24 generally categorizes those websites?

25 A. Yes, I did.

1 Q. Can you tell us how?

2 A. Generally categorizes those websites as religion.

3 Q. Do they categorize any of those as sexuality?

4 A. No, sir, it did not.

5 Q. Let's go back to Exhibit 5. P5, I'm sorry. This was
6 the URLBlacklist.com website, and I would like to direct your
7 attention to the frequently asked questions section, which is,
8 starts on the fourth page of the exhibit.

9 I'd like to look at question No. 9. Can you see
10 there that the frequently asked question is, quote, "What steps
11 do you take to discover new sites?" Do you see that?

12 A. Yes, sir, I do.

13 Q. And then within the answer, do you see there's a
14 reference to dmoz.org?

15 A. Yes, sir, I do.

16 Q. And is that, that dmoz.org, is that what you were
17 talking about earlier?

18 A. Yes, sir, it was.

19 Q. Can you explain to the judge what exactly DMOZ is?

20 A. Dmoz.org is a public internet infrastructure project
21 that started in 1999. It was organized by Netscape at that
22 time, which was one of the biggest internet browsers.

23 It's basically a well-organized volunteer effort to
24 locate the best and most useful internet resources as far as
25 websites go. This is a very highly respected piece of

1 infrastructure in the internet community, even though it's not
2 known very well outside of the field. But all of the major
3 search engines use dmoz.org in order to assist in their search
4 compilations. It's generally regarded as a very high quality
5 source of information.

6 Q. Is DMOZ, is that a catalog of websites?

7 A. Yes, sir, it is.

8 Q. Who categorizes the websites at dmoz.org?

9 A. Various volunteers categorize the websites according to
10 written policies.

11 Q. Does DMOZ have criteria for selecting sites to include
12 in dmoz.org?

13 A. Yes, sir.

14 Q. Mr. Hinkle, I've handed you what's been marked as
15 Exhibit P50. Can you identify what that is for us?

16 A. Yes, sir. This is the, DMOZ's written site selection
17 criteria.

18 Q. And then on the first page, there's a section that says
19 sites to include. Do you see that?

20 A. Yes, sir.

21 Q. And right there in the first paragraph it says, quote,
22 "The ODP's goal" -- and can you tell us what ODP is?

23 A. The open directory project. It's a nickname for DMOZ.

24 Q. It says, quote, "The ODP's goal is twofold: To create
25 the most comprehensive and definitive directory of the web, and

1 to create a high quality, content-rich resource that the
2 general public considers useful and indispensable. In short,
3 editors should select quality sites and lots of them." Is that
4 what it says?

5 A. Yes, sir, it is.

6 Q. Is that consistent with your understanding of how DMOZ
7 operates?

8 A. Yes, sir, it is.

9 MR. FINK: Your Honor, I offer into evidence Exhibit
10 P50.

11 MR. MICKES: No objection.

12 THE COURT: It's admitted.

13 (Plaintiffs' Exhibit P50 was admitted into evidence.)

14 BY MR. FINK:

15 Q. I think you may have mentioned before, but just to be
16 clear, is DMOZ intended to be used to clarify which websites
17 should be blocked or not blocked?

18 A. Absolutely not.

19 Q. Now, DMOZ has several different categories of websites;
20 is that correct?

21 A. Yes, sir.

22 Q. Mr. Hinkle, I've handed you what's been marked as
23 Exhibit P47. Can you identify what that is for us?

24 A. Yes, sir, it's a copy of DMOZ's top-level categories.

25 Q. So this shows the top-level categories at DMOZ?

1 A. Yes, sir.

2 Q. And then you can click on these categories and you go
3 into what, subcategories?

4 A. Yes, sir.

5 MR. FINK: Your Honor, I would offer into evidence
6 Exhibit P47.

7 MR. MICKES: No objection.

8 THE COURT: It's admitted.

9 (Plaintiffs' Exhibit P47 was admitted into evidence.)

10 BY MR. FINK:

11 Q. In the top-level categories at DM0Z as shown in P47 is
12 something called society; is that correct?

13 A. Yes, sir.

14 Q. So I take it if you click on society, it will take you
15 down to the subcategories within the category society?

16 A. Yes, sir.

17 Q. Mr. Hinkle, I've handed you what's been marked as
18 Exhibit P48. Can you identify what that is for us?

19 A. Yes, sir. It's a listing of the subcategories within
20 society.

21 Q. Okay. So then within the category society, we see one
22 of the categories is sexuality. Is that correct?

23 A. Yes, sir.

24 Q. And that's shown in the right column?

25 A. Yes, sir.

1 Q. And then in the category society, there's a separate
2 category called gay, lesbian, and bisexual; do you see that?

3 A. Yes, sir.

4 Q. So DMOZ, does it lump gay, lesbian, and bisexual, that
5 subcategory, with the sexuality category?

6 A. No, sir, it does not.

7 MR. FINK: Your Honor, I offer Exhibit P48.

8 MR. MICKES: No objection.

9 THE COURT: It's admitted.

10 (Plaintiffs' Exhibit P48 was admitted into evidence.)

11 BY MR. FINK:

12 Q. And I take it on Exhibit P48 if you click on the gay
13 and lesbian and bisexual link, that will take you to further
14 subcategories of that subcategory?

15 A. Yes, sir.

16 Q. Mr. Hinkle, I've handed you what we've marked as
17 Exhibit P49. Can you identify what that is for us?

18 A. Yes, sir. This is the subcategories within the gay and
19 lesbian and bisexual subcategory.

20 Q. And so some of these subcategories for the gay,
21 lesbian, and bisexual category include, history is one of them?

22 A. Yes, sir.

23 Q. Is one of them law?

24 A. Yes, sir.

25 Q. News and media?

1 A. Yes, sir.

2 Q. One on politics?

3 A. Yes, sir.

4 Q. One on religion and spirituality?

5 A. Yes, sir.

6 MR. FINK: Your Honor, I offer into evidence Exhibit
7 P49.

8 MR. MICKES: No objection.

9 THE COURT: It's admitted.

10 (Plaintiffs' Exhibit P49 was admitted into evidence.)

11 BY MR. FINK:

12 Q. Now, earlier we talked about the two subcategories of
13 the society category in DMOZ.org, the gay, lesbian and bisexual
14 subcategory, and the sexuality category. Did you download the
15 listing of websites in those two subcategories and compare that
16 to the sexuality category of the URL Blacklist?

17 A. Yes, sir, I did.

18 Q. Mr. Hinkle, I've handed you what's been marked as
19 Exhibit P54. Can you identify what that is for us?

20 A. Yes, sir. It's the results of my comparison of the
21 society gay and lesbian and bisexual categories in DMOZ, the
22 society sexuality category in DMOZ --

23 COURT REPORTER: I'm sorry, would you please slow
24 down?

25 A. I'm sorry. It's the results of my comparing these two

1 categories within DMOZ. The two categories are "Society: Gay,
2 lesbian, and bisexual," and the second category is "Society:
3 Sexuality," with the URL Blacklist sexuality category.

4 Q. So it looks like the top of Exhibit P54 you compared
5 the websites in dmoz.org "Society: Gay, lesbian, and
6 bisexual," that category, with the websites included in the
7 sexuality category of URL Blacklist; is that correct?

8 A. Yes, sir, I did.

9 Q. Tell me what you found.

10 A. I found that all but 18 of the websites were included
11 in the URL Blacklist sexuality category.

12 Q. So over 99 percent of the sites in dmoz.org "Society:
13 Gay, lesbian, and bisexual" were included in the sexuality
14 category of URL Blacklist.

15 A. Yes, sir.

16 Q. And then the second table here in Exhibit P54, this
17 shows your comparison of the websites in dmoz.org "Society:
18 Sexuality," that subcategory, with the sexuality category on
19 URL Blacklist; is that correct?

20 A. Yes, sir.

21 Q. Can you tell us what you found there?

22 A. I found that all but one of the websites was included
23 in URL Blacklist's sexuality category.

24 Q. So 99.8 percent were included.

25 A. Yes, sir.

1 MR. FINK: Your Honor, I offer into evidence Exhibit
2 P54.

3 MR. MICKES: No objection.

4 THE COURT: I don't understand it.

5 MR. FINK: I'll try to help you.

6 THE COURT: So let's try that again.

7 BY MR. FINK:

8 Q. So just to back up, you talked earlier about there's a
9 category --

10 THE COURT: I understood the first one. I don't
11 understand the second one.

12 MR. FINK: The second one. Okay.

13 BY MR. FINK:

14 Q. Within dmoz.org, the society category, there's a
15 subcategory specifically called sexuality; is that right?

16 A. Yes, sir.

17 Q. And you took the websites from that subcategory in
18 dmoz.org.

19 A. Uh-huh.

20 Q. Is that correct?

21 A. Yes, sir.

22 Q. And according to your chart, that number is 410
23 websites; is that right?

24 A. Yes, sir.

25 Q. And then did you take those 410 websites and see which

1 of those are also included in the sexuality category in URL
2 Blacklist?

3 A. Yes, sir, I did. 99 percent of those websites are
4 included in URL Blacklist's sexuality category.

5 Q. So is it fair to say that the vast majority of the
6 websites in both the DMOZ gay, lesbian, and bisexual category
7 and the DMOZ sexuality category, that almost all of them are
8 included in the sexuality category of URL Blacklist?

9 A. Yes, sir, which leads me to draw the conclusion that
10 this is where URL Blacklist is obtaining its data.

11 Q. And we talked about the sexuality category in URL
12 Blacklist. Did you do anything to check to see whether it's
13 even effective at blocking sexually explicit sites?

14 A. Yes, I did, sir.

15 Q. And tell me what you did to go about that.

16 A. I did Google searches and identified 500 obviously
17 sexually explicit websites, which we then analyzed with URL
18 Blacklist and CIPAFilter.

19 Q. I want to step back. So you took the sexuality
20 blacklist, right?

21 A. Uh-huh.

22 Q. Or did you take the entire URL Blacklist to do this?

23 A. I did both tests.

24 Q. Okay. Let's step back because I think we were confused
25 there for a second.

1 The sexuality listing in URL Blacklist, that's a
2 list of thousands of websites; is that correct?

3 A. Yes, sir.

4 Q. And did you check those to see whether they, in fact,
5 contained sexually explicit content?

6 A. Oh. Yes, sir.

7 Q. And what did you find?

8 A. I found that the sexuality category contains only a
9 very small amount of sexually explicit content.

10 Q. And how did you go about doing that analysis?

11 A. I loaded the sexuality blacklist into CIPAFilter and
12 had it analyze all the websites in the list to see which ones
13 were sexually explicit. I also had a human perform a spot
14 check of a 300 website sample from the list -- 500 website
15 sample from the list, excuse me. Three hundred.

16 Q. Okay. Mr. Hinkle, I've handed you what's marked as
17 Exhibit P52. Can you identify what that is for us?

18 A. This is the results of my analysis.

19 Q. Okay. And then in the first row there's something
20 called CIPAFilter automated analysis. Is this where you took
21 the websites included in the sexuality category of URL
22 Blacklist and ran that against the CIPAFilter --

23 A. Yes, sir.

24 Q. -- to see whether CIPAFilter would block those
25 websites?

1 A. Yes, sir.

2 Q. And what was the outcome of that testing?

3 A. The outcome of that testing was that CIPAFilter
4 identified 2.4 percent of the websites on the sexuality
5 blacklist as sexually explicit.

6 Q. So CIPAFilter only blocked 2.4 percent of those sites
7 as sexually explicit?

8 A. Yes, sir.

9 Q. And then you mentioned you also had a human look at a
10 sampling of these sexually explicit sites. What was done
11 within that check?

12 A. Chris Cooper, a fellow engineer, he analyzed a sample
13 of 300 websites selected from the list to determine which ones
14 were sexually explicit, and he found that 7 percent in his
15 opinion were sexually explicit.

16 MR. MICKES: I'm going to object. I'm going to
17 object to that as hearsay.

18 BY MR. FINK:

19 Q. Did Mr. Cooper --

20 THE COURT: Any objection? I mean, any response to
21 that? Sounds like hearsay to me.

22 MR. FINK: He's testifying as an expert here today
23 and this was done under his direction. He had a subordinate do
24 this testing. He was doing a wide variety of testing to
25 prepare for his testimony today.

1 MR. MICKES: He's testifying as an expert, but he's
2 testifying as an expert what somebody else did and what
3 somebody else told him. That's hearsay. I have no way to
4 challenge, I have no way to question this other engineer that
5 he supposedly spoke to.

6 MR. FINK: Can I introduce foundation, Your Honor?

7 THE COURT: Yes.

8 BY MR. FINK:

9 Q. Mr. Hinkle, in the scope of your work, did Mr. Cooper
10 assist you in performing the tasks that you did?

11 A. Yes, sir.

12 Q. And in doing this spot check, did you give him
13 direction on what to do?

14 A. Yes, sir, I gave him explicit instructions.

15 Q. What did you tell Mr. Cooper to do?

16 A. I told Mr. Cooper to take an Excel spreadsheet, to load
17 the contents of URL Blacklist into that spreadsheet, the
18 sexuality category. I told him to generate a randomized column
19 which would allow him to randomly assign a number to every
20 website on the list, and then to sort that spreadsheet and
21 analyze the first 300 results, which would result in analysis
22 of 300 randomly selected samples from the list.

23 I asked him to, in his opinion, evaluate the
24 websites based on whether or not they contained pornographic
25 content and report the results by marking each website as

1 pornographic or nonpornographic.

2 MR. MICKES: The questions are elucidative, but they
3 don't solve the problem. He still asked him for his -- said he
4 gave me his opinion. I told him to do it, but he did it and he
5 gave me his opinion. That's clearly hearsay.

6 MR. FINK: He's an expert relying on the work of a
7 subordinate.

8 THE COURT: Cite me to a rule that talks about that
9 because that's what I was looking for. I know they can rely on
10 hearsay, but I can't find the rule at this moment that tells me
11 what permits that, and whether this falls within the rule.
12 Here it is.

13 MR. MICKES: It's kind of hearsay on hearsay because
14 we have his assistant making a decision about what is or what
15 is not pornographic. We don't know what that is. He's not
16 here to define that for us. I can't question him about that.
17 It puts the defendants at a severe disadvantage.

18 THE COURT: Thank you. Tell me what his opinion is
19 that is based on these facts.

20 BY MR. FINK:

21 Q. Mr. Hinkle --

22 MR. FINK: May I ask the witness for his opinion, or
23 do you want me to tell you?

24 THE COURT: No, I --

25 MR. FINK: I think it had better come from the

1 witness.

2 BY MR. FINK:

3 Q. Mr. Hinkle, what is your opinion based on what
4 Mr. Cooper did in doing his analysis of these 300 websites and
5 finding that 7 percent contained sexually explicit content?

6 A. My opinion is that URL Blacklist contains between 2.4
7 percent and 7 percent sexually explicit content.

8 MR. FINK: Your Honor, I see you're troubled by it.
9 I'll withdraw that part of this chart, if that's okay.

10 THE COURT: It doesn't fit in a normal exception to
11 hearsay. I suspect it makes no difference, but I will sustain
12 the objection out of an abundance of caution.

13 MR. FINK: With that, if we could offer -- I would
14 offer Exhibit P52 into evidence with the understanding that the
15 section on human analysis of random samples is excluded. I
16 would offer just the first row of data on Exhibit P52.

17 THE COURT: Oh. You're talking about the filter.

18 MR. FINK: Yes.

19 THE COURT: Any objection?

20 MR. MICKES: No objection.

21 THE COURT: It's admitted.

22 (Plaintiffs' Exhibit P52 was admitted into evidence.)

23 THE COURT: As modified.

24 BY MR. FINK:

25 Q. Now, let's shift subjects, Mr. Hinkle. And just now we

1 were talking about the sexuality category and whether that
2 really contains sexually explicit content in URL Blacklist.

3 Now I want to talk about the overall URL Blacklist
4 and how effective it is in blocking pornography. Have you
5 tested the effectiveness of URL Blacklist in blocking sexually
6 explicit websites?

7 A. Yes, sir, I have.

8 Q. Can you tell us what you did?

9 A. I identified a selection of 500 sexually explicit
10 websites that were obviously sexually explicit, and then I
11 analyzed these 500 websites in URL Blacklist to determine its
12 effectiveness.

13 Q. And did you also run this 500 sexually explicit
14 websites through the CIPAFILTER for comparison purposes?

15 A. Yes, sir, I did.

16 Q. Mr. Hinkle, can you identify for us what Exhibit P53
17 is?

18 A. Yes, sir. It's the results of that analysis.

19 Q. In Exhibit P53, does that contain a listing of the 500,
20 502 sexually explicit websites that were analyzed?

21 A. Yes, sir, it does.

22 Q. And then the, to the right of that, the next column,
23 does that indicate whether or not each of those websites was
24 blocked by URL Blacklist?

25 A. Yes, sir, it does.

1 Q. And then the column over from that, does it indicate
2 whether each website is blocked by the CIPAFilter?

3 A. Yes, sir, it does.

4 Q. And if it says yes in those columns, that means that
5 those filters blocked that particular website, correct?

6 A. Yes, sir, it does.

7 Q. And if it says no and highlighted in red, does that
8 mean that those websites were not blocked by the filters?

9 A. Yes, sir, it does.

10 Q. Let's go to the last page of Exhibit P53 where we have
11 summary numbers. Can you tell us how URL Blacklist did in
12 blocking sexually explicit websites?

13 A. URL Blacklist failed to block over 30 percent of the
14 websites we tested.

15 Q. How did CIPAFilter do?

16 A. CIPAFilter only failed to block 3.2 percent of the
17 websites tested.

18 MR. FINK: Your Honor, I would offer into evidence
19 Exhibit P53.

20 MR. MICKES: No objection.

21 THE COURT: P53 is admitted.

22 (Plaintiffs' Exhibit P53 was admitted into evidence.)

23 BY MR. FINK:

24 Q. Now, Mr. Hinkle, does the school district have to use
25 URL Blacklist to prevent its students from accessing sexually

1 explicit content on the internet?

2 A. No, sir, it does not.

3 Q. It could use a product like CIPAFilter.

4 A. Yes, sir, it could.

5 Q. And there's many other products it could use.

6 A. Yes, sir, absolutely.

7 Q. And does the school district have to block websites
8 that are supportive of lesbian, gay, bisexual and transgender
9 individuals in order to prevent its students from accessing
10 sexually explicit content on the internet?

11 A. No, sir, it does not.

12 MR. FINK: That's all the questions I have, Your
13 Honor.

14 THE COURT: And for the defendant?

15 - - -

16 CROSS-EXAMINATION

17 By Mr. Mickes:

18 Q. Mr. Hinkle.

19 A. Good morning, sir.

20 Q. Good morning. A couple of preliminary questions. CIPA
21 is the acronym for your company.

22 A. It's the acronym for the Child Internet Protection Act
23 for which our company was named.

24 Q. That answers my question, thank you. And it stands
25 for --

1 A. The Child Internet Protection Act.

2 Q. And that is a federal act?

3 A. Yes, sir.

4 Q. And what does that federal act require school districts
5 to block?

6 A. The federal act requires school districts to make an
7 attempt to block sexually explicit pornography, especially
8 child pornography.

9 Q. Obscenity?

10 A. Yes, sir. I'm not aware if that act requires
11 explicitly blocking obscenity, sir.

12 MR. MICKES: May I approach the witness, Your Honor?

13 THE COURT: You may.

14 BY MR. MICKES:

15 Q. Mr. Hinkle, I want to give you a copy of the Act, and
16 I'm directing your attention to page 4 of the lists of material
17 that are required to be blocked by the Child Internet
18 Protection Act. Do you see the reference?

19 A. Yes, sir, I do.

20 Q. Could you share with us what three categories are
21 required to be blocked?

22 A. The categories are obscene, child pornography, or
23 harmful to minors.

24 Q. Harmful to minors does not exactly give you clear
25 guidance as to what that is in your opinion, does it?

1 A. No, sir.

2 Q. Now, I take it from your testimony that you think your
3 product is better than URL Blacklist.

4 A. Yes, sir.

5 Q. And you sell that product in competition with URL
6 Blacklist.

7 A. Yes, sir.

8 Q. Okay. And have you testified in hearings like this
9 about URL Blacklist?

10 A. No, sir, this is my first.

11 Q. Okay. Have you given any presentations advancing your
12 product, CIPA, versus URL Blacklist?

13 A. No, sir. URL Blacklist is not generally a competitor
14 we target. It doesn't have a big enough share of the market to
15 be of interest to us.

16 Q. Okay. And you invented the CIPA system.

17 A. CIPAFilter, yes, sir, I did.

18 Q. And you are the owner of the company that distributes
19 that?

20 A. No, sir, I'm just an employee.

21 Q. Okay. Did you sell your product to that company?

22 A. No, sir, I did not.

23 Q. Gave it to them?

24 A. No, sir. I was just an employee of the company. I
25 pitched the idea to the owner, who chose to hire me to

1 implement the product. But I don't have any ownership stake,
2 I'm simply an employee of the company.

3 Q. What's your salary at that company?

4 A. My salary at that company is between \$100,000 and
5 \$170,000 per year, depending on the success of the company in
6 any given year.

7 Q. It depends on how much of the CIPA product you sell,
8 the CIPAFilter.

9 A. Generally not directly connected, sir. I get bonuses
10 based upon my performance as a programmer. Since I'm not a
11 salesperson, generally it's just based upon how management
12 feels about my performance in any particular quarter.

13 Q. When I listened to your testimony, much of what I heard
14 was comparing URL Blacklist to CIPA or other screening
15 products. Is that an accurate statement?

16 A. Yes, sir.

17 Q. Have you taken the opportunity to determine what
18 filtering system the Camdenton School District uses?

19 A. My understanding is that they use SquidGuard or
20 DansGuardian.

21 Q. And what is your understanding based on?

22 A. My understanding is based on the information I've been
23 presented with in accordance of these proceedings.

24 Q. And who presented you with that information?

25 A. The ACLU.

1 Q. Okay. So your information about what happens at
2 Camdenton is based on what the ACLU told you happened there.

3 A. Yes, sir. And the review of Camdenton's letters.

4 Q. So you've never been to Camdenton.

5 A. No, sir, I have not.

6 Q. And you've never looked at the filtering system
7 directly that Camdenton uses.

8 A. No, sir, I have not.

9 Q. So your testimony, if it is accurate, depends upon the
10 accuracy of the information given to you by the ACLU.

11 A. No, sir. The information, specifically my analyses of
12 URL Blacklist are dependent on the letter that Camdenton sent
13 to the ACLU where they told us that they use URL Blacklist for
14 their filter.

15 Q. Did they tell you that there is a, they developed their
16 own -- I'm not a technological person so I'll butcher the
17 word -- their own appliance or their own structure that they
18 use to screen?

19 A. That's how URL Blacklist is used. Since URL Blacklist
20 is not software, it's just a blacklist, it must be installed on
21 a piece of software such as DansGuardian or SquidGuard.

22 Q. Did they tell you, did you learn, or do you know now
23 that they have a customized product that is attached to URL
24 Blacklist?

25 A. I'm not aware of how they may have customized URL

1 Blacklist.

2 Q. Okay. So you're -- that whole list of statistics that
3 you gave with respect to what URL Blacklist and what CIPA or
4 others is based on if they were using purely URL Blacklist; is
5 that correct?

6 A. As they indicated in their letters.

7 Q. All right. Now, what is your understanding of the
8 customized work that was done on the filtering devices at
9 Camdenon School District?

10 A. I'm not aware of any customization of the filtering
11 devices at the Camdenon School District other than the ability
12 to selectively whitelist specific websites that are requested
13 by students.

14 Q. When you say to specifically whitelist, so we're
15 talking about the same things, you're talking about a student's
16 ability to unblock a website?

17 A. I'm talking about the student's ability to request a
18 website be unblocked.

19 Q. So you're aware that students at Camdenon School
20 District, irrespective of the filtering system, have the
21 ability to unblock specific websites?

22 A. I'm aware that they have the ability to request that a
23 website be unblocked.

24 Q. Yes. And do you know how many websites, how many
25 requests that they had to unblock websites over the past five

1 or six years?

2 A. No, sir, I'm not aware of how many websites they had to
3 unblock.

4 Q. And are you aware of how many of those websites were
5 unblocked?

6 A. No, sir, I'm not aware.

7 Q. And for every district that your company sells the CIPA
8 filtering system, your company earns a fee.

9 A. Yes, sir.

10 Q. And you're telling the court that the fee that's spent
11 for CIPA is better spent than it is for URL Blacklist or one of
12 your competitors?

13 A. No, sir.

14 Q. You're not, you're not saying that the money spent on
15 CIPA is better than the money spent on URL Blacklist?

16 A. My personal opinion is the CIPAFilter is a great
17 product, but that's not what I'm here to testify about here
18 today, sir.

19 Q. That's not my question. My question is do you think
20 that your product, CIPA, is a better product than URL
21 Blacklist?

22 A. Yes, sir, I think that CIPAFilter is a better product
23 than URL Blacklist.

24 Q. Okay. Now, you're familiar with how many schools -- I
25 think you said a thousand schools use the CIPA software

1 filtering system?

2 A. I misspoke. It's actually a thousand school districts,
3 sir.

4 Q. Yeah. I may have misspoke but I thought that's what I
5 said. I apologize? Are you aware because you've done all of
6 this research, are you aware of how many school districts use
7 the URL Blacklist?

8 A. No, sir, I'm not aware.

9 Q. Okay. And you're not aware of how many use URL
10 Blacklist that's been customized.

11 A. No, sir, I'm not aware.

12 Q. Okay. And your educational background to be a software
13 developer is what?

14 A. My background as a software developer, I'm completely
15 self-taught, sir. I wrote my first commercial program --

16 COURT REPORTER: I'm sorry. Could you please slow
17 down?

18 A. My apologies, ma'am. I wrote my first commercial
19 software package when I was 16. I went into the industry
20 full-time right after high school, and I've been working in the
21 industry since.

22 Q. So you're self-taught.

23 A. Yes, sir.

24 Q. Congratulations. I want to talk to you a little bit
25 about what actually, what actually happens at Camden School

1 District. I believe you testified that you weren't aware that
2 there was a customized filtering system at Camdenon.

3 A. I'm aware that they have created provisions to allow
4 students to request that websites be unblocked.

5 Q. Okay. Are you aware that there's a system on top of
6 URL that prevents things from going into URL?

7 A. A blacklist? No, sir, I'm not aware of that.

8 Q. Okay. So your testimony this morning would be based on
9 the information that the ACLU has given you.

10 A. Based on the information provided to them by Camdenon.

11 Q. Okay. And are you aware of how many -- I'm going to
12 get this wrong, and I apologize. Is the correct acronym LGBT?

13 A. Yes, sir, LGBT.

14 Q. Okay. Are you aware of how many LGBT sites have been,
15 are open for students at the Camdenon School District?

16 A. No, sir, I am not.

17 Q. So it could be one, it could be five thousand?

18 A. Yes, sir.

19 Q. And are you aware of the manner that a student would
20 utilize in order to unblock a site that had been blocked,
21 whether it's LGBT or whether it's St. Louis Cardinals baseball?

22 A. No, sir, I'm not aware of the procedure for a student
23 to request that a website be unblocked at Camdenon.

24 Q. And so you're not aware that there's a pop-up on the
25 screen?

1 A. No, sir.

2 Q. And you're not aware that there's a process that you
3 can directly appeal to the superintendent?

4 A. No, sir, I'm not aware.

5 Q. And you're not aware of the 24-hour turnaround time to
6 consider and unblock a site?

7 A. No, sir.

8 Q. I believe there was some testimony that you gave that
9 there were some websites on the LGBT black site, URL black site
10 that was not supportive of LGBT?

11 A. I'm sorry, sir. I am aware that there are some
12 pro-LGBT websites on URL Blacklist's sexuality category, and
13 I'm aware that there are some anti-LGBT websites on URL
14 Blacklist's religious category.

15 Q. But you're not aware of which, if any, of those sites
16 are available at Camdenton High School.

17 A. No, sir.

18 Q. You also testified that one of the categories on URL
19 Blacklist is sexuality, and you testified, I believe, about the
20 number of -- based on your study, the number of sexually
21 inappropriate sites that were on there?

22 A. Yes, sir.

23 Q. Okay. Again, because you're not familiar with the
24 Camdenton system, you don't know how many of those systems are
25 open in Camdenton.

1 A. No, sir. I do not, would not expect them to whitelist
2 sexually explicit websites.

3 MR. MICKES: I have no more questions, Your Honor,
4 thank you. Thank you, Mr. Hinkle.

5 THE WITNESS: Have a great day, sir.

6 MR. FINK: Nothing further, Your Honor.

7 THE COURT: Okay. Thank you. You may step down.
8 Any further witnesses for the plaintiff?

9 MR. BLOCK: Yes, Your Honor, we'd like to call
10 Mr. Hadfield as a witness.

11 - - -

12 TIMOTHY HADFIELD,
13 being first duly sworn by the courtroom deputy, testified as
14 follows:

15 - - -

16 DIRECT EXAMINATION

17 By Mr. Block:

18 Q. Good morning, Mr. Hadfield.

19 A. Good morning.

20 Q. I'm showing you what's marked Exhibit P14. Do you
21 recognize this exhibit?

22 A. I do.

23 Q. Can you tell us what it is?

24 A. It was an affidavit in relation to this suit.

25 Q. And if you turn to, I guess, the fourth page of the

1 exhibit, this is an exhibit to your affidavit; is that correct?

2 A. Yes.

3 Q. And as I understand it, these are the minutes of the
4 board meeting at Camdenton on August 30th; is that correct?

5 A. Yes.

6 Q. And is this the board meeting where the school district
7 adopted their current unblocking policies?

8 A. At this meeting, the Board of Education revised policy
9 and administrative procedure.

10 Q. And you attended this meeting; is that right?

11 A. Yes.

12 Q. Okay. It says down on Roman Numeral IV, it says,
13 "Thirteen district patrons spoke during the public comment
14 section regarding the district's internet usage policies,
15 regulations, and procedures." Is that your understanding of
16 what occurred that night?

17 A. That would be my understanding, yes.

18 Q. And how many of those district patrons supported
19 keeping the current filter in place?

20 A. Well, we didn't take a poll, but it would be my
21 understanding that that evening that those 13 persons that
22 spoke were supportive of the school district's stance.

23 Q. And what reasons did they give?

24 A. Reasons would have been that we support our school
25 district.

1 Q. Any other reasons?

2 A. Granted, this has been a little time ago, but vaguely
3 that's what I remember.

4 Q. Did anyone say that they didn't want their kids to have
5 access to content about homosexuality?

6 A. I do not recall that specific comment, no.

7 Q. Do you recall parents demanding that they be given
8 parental notification if a student requests access to one of
9 these sites?

10 A. I do recall that, yes.

11 Q. And what did you say in response?

12 A. The response was that we do have certain federal
13 mandates that we must follow, and we will not discriminate
14 against our students, but at the same time we would protect our
15 students.

16 Q. But what was your response to the actual question about
17 whether they can be given notification if a student requests
18 that the site be unblocked?

19 A. That -- at that board meeting we did not have legal
20 counsel, so my response was that that would be something that
21 we would have to look into, but it was my understanding that
22 prior parental consent was not needed.

23 Q. I'm showing you what's been marked Exhibit P30. Is
24 that your picture on the cover of this page?

25 A. Not a very flattering one, but, yes, it is.

1 Q. And at the top of the page it has the logo of The
2 Reporter. Are you familiar with this publication?

3 A. Somewhat. I have read it once or twice.

4 Q. Okay. And have you read this article dated September
5 7th, 2011?

6 A. Yes, I have read this.

7 Q. Okay. So I want to walk you through some of the things
8 in this article, and you can tell me if they're accurate or
9 not.

10 A. Okay.

11 Q. If you would turn to page 3, a little bit below the
12 middle hole punch where it says, "Jan Boyce of Sunrise Beach
13 agreed." Do you see that?

14 A. Yes. Yes, Jan Boyce, uh-huh.

15 Q. Do you remember her speaking at the meeting?

16 A. Vaguely, I do remember her speaking.

17 Q. Okay. And it quotes her here as saying, (quoted as
18 read) "If the parent allows this in the house, that's one
19 thing, but to do it outside the family circle, you usurp the
20 authority of the parents." Does that accurately capture what
21 she said?

22 A. To the best of my recollection, it does.

23 Q. Okay. And then two, two or three lines down, starts
24 with Hadfield. It says, "Hadfield confirmed that the district
25 has not forwarded any of these requests to parents in the past,

1 but added that specific procedure can always be revisited and
2 revised at any time." Did you say that?

3 A. I did state that the district had not asked for prior
4 parental consent before and that we could come back and visit
5 that at another time, yes.

6 Q. And then below that, it says Beckett. Who is Beckett?

7 A. John Beckett would be a member of our Board of
8 Education.

9 Q. And here it says, "Beckett said the amended policy may
10 not have gone far enough." And it quotes him as saying, "I
11 would like parental consent of special requests in our policy."
12 Is that quotation accurate?

13 A. I do not recall that.

14 Q. You don't recall him saying he would like to see
15 parental consent added to the policy?

16 A. I do not recall that, but if it's in the article, I
17 would concur that that could be accurate.

18 Q. Below that it says, (quoted as read) "Hadfield
19 mentioned the time restraints involved in the district's answer
20 to the lawsuit." I may have misread that. (Quoted as read.)
21 "Hadfield mentioned the time restraints involved in the
22 district's answer to the lawsuit. A response needed to be
23 filed by Thursday, and district's, quote, articulated internet
24 policy was part of that response."

25 Did you say that?

1 A. I did mention that there were time constraints with
2 motions that needed to be filed.

3 Q. And below that it says, "The board unanimously approved
4 the amended internet policies, as well as a motion from Beckett
5 to revisit the internet policy and hold the public forum after
6 the conclusion of the lawsuit." Did that occur?

7 A. Yes, it did.

8 Q. And actually, if you go back to the exhibit to your
9 affidavit -- so this is P14, if you turn to the fourth page, at
10 the top it says, motion, move that the board revisit IIAC-R and
11 these other policies, and hold a public forum and take under
12 advisement what the general population would like to see in
13 these policies and procedures. Is that a part of the minutes
14 reflecting what Mr. Beckett moved for in the article?

15 A. Yes.

16 Q. And is there a reason why the minutes don't talk about
17 possible parental notification requirements?

18 A. If the minutes do not?

19 Q. Yeah, do you see possible parental notification
20 requirements anywhere in these minutes?

21 A. No.

22 Q. Is there a reason why they're left off the minutes?

23 A. No, not necessarily.

24 Q. Now, you say that we could revisit the policy to give
25 parental notification at any time. I guess my first question

1 is why wait until the end of the lawsuit to hold this forum?

2 A. Basically so that as a district we could focus on the
3 education of our children.

4 Q. Are you aware that your attorneys have moved to have
5 the lawsuit dismissed based on the policy?

6 A. I am.

7 Q. So what would happen if the court said this lawsuit is
8 dismissed based on the policy, and then the board went and
9 changed the policy?

10 A. I do not believe the board talked about necessarily
11 changing the policy, but to hold a forum to discuss the policy.

12 Q. To discuss changing the policy.

13 A. To discuss the policy.

14 Q. You say that we could add parental notification at any
15 time. How could you add parental notification if the requests
16 are anonymous?

17 A. At that point in time with our board meeting and,
18 again, without the input from our attorneys, that would be
19 looked into, but that may not be the appropriate course of
20 action for the district.

21 Q. Isn't it true that the requests aren't really
22 anonymous?

23 A. That is not accurate.

24 MR. BLOCK: Okay. I'm going to play an audio clip
25 with the court's permission. And I have --

1 THE COURT: Is it marked as an exhibit?

2 MR. BLOCK: It is. I'm handing up now P thirty --
3 excuse me, Your Honor. It's P33 and P34, which is a CD of the
4 clip and a transcript.

5 THE COURT: Any objection?

6 MR. MICKES: No objection.

7 THE COURT: It's admitted.

8 (Plaintiffs' Exhibits P33 and P34 were admitted into
9 evidence.)

10 BY MR. BLOCK:

11 Q. And you can read along with the transcript and tell me
12 if you think it's accurate and if you recognize the voice on
13 the clip.

14 (Playing Plaintiffs' Exhibit P33.)

15 Q. Do you recognize the voice?

16 A. I do.

17 Q. Who is the voice on that clip?

18 A. Dr. Mickes.

19 Q. And what do you understand he was referring to in that
20 clip?

21 A. My take on it would be that Dr. Mickes was referring to
22 our policy of, or the ability for students to open a blocked
23 website.

24 Q. Isn't it true that when a student logs onto a website
25 and the website is blocked, the school knows that the student

1 attempted to log onto that website; isn't that correct?

2 A. We would not know specifically what student, no.

3 Q. You wouldn't know that the student has attempted to
4 access the website and then a popup has appeared?

5 A. We would know that access to a website was made -- and,
6 again, this is my understanding. I'm not a techie.

7 That access to a website would be made, but we
8 wouldn't necessarily know what student did that or who did
9 that.

10 Q. So let's look at the transcript. When Mr. Mickes said
11 it would involve identifying the student, it's going to involve
12 identifying the student that wants to, you know, open the
13 material, what's he referring to?

14 MR. MICKES: I'm going to object to the question.
15 He's asking the witness to be in my mind about what I meant
16 when I made that statement. If he wants to call me as a
17 witness, he certainly can.

18 BY MR. BLOCK:

19 Q. Did you believe this to be a true statement based on
20 your understanding?

21 MR. MICKES: Same objection.

22 THE COURT: Grounds?

23 MR. MICKES: He's asking this witness what I said
24 and what I meant by what I said.

25 THE COURT: He may ask if it's true, if he thought

1 it was true. I'll overrule the objection.

2 A. So the question is?

3 BY MR. BLOCK:

4 Q. It is, do you believe this is a true statement?

5 A. The student would not necessarily be identified, no.

6 Q. Okay.

7 THE COURT: So it's not a true statement. Is that
8 what you're saying?

9 THE WITNESS: I'm saying it's not totally true, Your
10 Honor.

11 BY MR. BLOCK:

12 Q. Do you think that all websites discussing LGBT-related
13 issues are sexually explicit?

14 A. No.

15 Q. Do you think students should have to ask permission to
16 access LGBT-supported websites?

17 A. If they're appropriate.

18 Q. Well, let me just ask the question again. How about
19 this. Do you think PFLAG is an appropriate website?

20 A. Upon review of it -- and I have not had a full review,
21 but upon review of that, yes.

22 Q. You haven't reviewed PFLAG since this Complaint was
23 filed?

24 A. Not the whole website, no.

25 Q. Do you think DignityUSA is an appropriate website?

1 A. As far as what I've reviewed, yes, but I do not know
2 the whole website either. So --

3 Q. So is it your position that before a student should be
4 able to access an LGBT-supported website, the school should
5 first review the website to see if it's appropriate?

6 A. No, not necessarily.

7 Q. Okay. So do you think it's appropriate to require
8 students to ask permission to access an LGBT-supported website?

9 A. If the website is appropriate.

10 Q. How would we know if the website is appropriate?

11 THE COURT: Well, I'm not understanding the answer.
12 The question is do you think it's appropriate for them to have
13 to ask. Is that correct?

14 MR. BLOCK: Yes.

15 THE COURT: So are you saying that if it's
16 appropriate, it's okay for them to ask, but if it's
17 inappropriate they can't even ask?

18 THE WITNESS: No, I'm not saying that, Your Honor,
19 thank you. I'm sorry.

20 No, I think there are very appropriate LGBT websites
21 that students would not need to ask for permission to view.

22 BY MR. BLOCK:

23 Q. But you believe that the LGBT-supported websites in the
24 sexuality filter should not be open to students unless the
25 student first asks and it's reviewed by the school?

1 A. I do not know all of those websites that are in the
2 sexuality filter.

3 Q. Do you know all of the websites that are in the news
4 filter?

5 A. No.

6 Q. Do you know all of the websites that are in any of the
7 filters?

8 A. No, I do not.

9 Q. Why doesn't the school district block all the website
10 filters and require a student to ask permission to access any
11 website?

12 MR. MICKES: I'm going to object to that. It simply
13 misstates the facts, it's not in evidence that everything is
14 blocked and you have to unblock every single one, that's not
15 true.

16 THE COURT: I understand it's not true. I'm not a
17 jury. I'm not misled. He's asking whether it would be
18 appropriate to approach that --

19 MR. MICKES: I'm sorry, Your Honor, I beg your
20 indulgence, but the statement was it is, and that's not true.
21 It's argumentative.

22 MR. BLOCK: It was why doesn't, why doesn't.

23 THE COURT: The quote is, "Why doesn't the school
24 district block all website filters and require a student to ask
25 permission to access any website?" You may answer the

1 question.

2 A. I do not know that we would block all of those
3 websites.

4 BY MR. BLOCK:

5 Q. Why not?

6 THE COURT: That's the question.

7 A. Because those websites would be appropriate for
8 students to view.

9 Q. How do you know they're appropriate for students to
10 review if you haven't reviewed all of the websites in the news
11 filter?

12 A. Because through our customization filter, they would be
13 deemed appropriate. But if they were not and they were
14 blocked, a student could ask for access to it.

15 Q. So you believe that if a website has been placed in the
16 sexuality filter, it is assumed that it's not appropriate until
17 the school has a chance to review it?

18 A. That would be my understanding. Unless -- unless,
19 again, the sexuality filter, if we're speaking URL Blacklist,
20 and, again, this is my understanding that we also have a system
21 on top of that URL Blacklist that would not block websites and
22 would block other websites that are not contained within the
23 URL filter.

24 Q. Do you think it's appropriate for students in the
25 school library to be able to read websites telling them that

1 it's okay to be gay?

2 A. Do I think that that would be appropriate?

3 Q. Yes.

4 A. Yes.

5 Q. Do you think it's appropriate for students in the
6 school library to read websites telling them that homosexuality
7 is just as good as heterosexuality?

8 A. Yes.

9 Q. Do you think it would be appropriate for students to
10 read in the school library websites that conflict with the
11 religious values of their parents?

12 A. Yes.

13 Q. Are you aware of any member of the school board
14 expressing concern with students accessing websites saying that
15 it's okay to be gay?

16 A. Yes.

17 Q. Can you say what those concerns were and who said them?

18 A. That as a parent, I would like to have my child not
19 access some of those sites.

20 Q. And this is a member of the school board?

21 A. I have heard that, yes.

22 Q. Firsthand?

23 A. Yes.

24 Q. What member of the school board was that?

25 A. Mr. Beckett.

1 Q. And that's the same Mr. Beckett that said he would like
2 to add a parental notification requirement to the policy?

3 A. Correct.

4 Q. You started working at Camdenon in 2007, right?

5 A. Yes.

6 Q. And since you've started working there, has the school
7 ever examined alternative filtering systems?

8 A. Alternative to URL Blacklist?

9 Q. Yes.

10 A. That would be my understanding, yes.

11 Q. That it has examined?

12 A. Yes.

13 Q. And why did the school conclude that the current
14 filtering system is better than the alternatives?

15 A. I do not know those reasons.

16 Q. If I could give you a filtering system that had, was
17 identical to your current filtering system, except it did not
18 block LGBT-supported websites, would you take it?

19 A. Which was identical?

20 Q. Identical except for that one difference.

21 A. With the modifications that we've made to our system,
22 identical?

23 Q. Yes.

24 A. If those LGBT websites were appropriate, yes, we would.

25 Q. What if I told you that it would cost an extra \$100 a

1 year to have that alternative system, would you take it?

2 A. I wouldn't see why we wouldn't.

3 MR. BLOCK: Okay. All right. I have no further
4 questions, Your Honor.

5 - - -

6 CROSS-EXAMINATION

7 By Mr. Mickes:

8 Q. There was a question about how many people spoke at
9 that board meeting in Camdenton. I believe it was in August of
10 2011?

11 A. Yes.

12 Q. And do you remember how many people were there
13 approximately that were not employees of the district and not
14 members of the board or invitees?

15 A. At the board meeting on the 30th, we probably had
16 between 50 and 60 community members attend that board meeting.

17 Q. How many citizens do you have in Camdenton?

18 A. District-wide, county-wide in Camdenton we have about
19 50,000 people.

20 Q. Okay. So you have 50 or 60 out of 50,000 people that
21 were there. And is one of the purposes of the board meeting to
22 give everybody an opportunity to voice their opinion?

23 A. Certainly.

24 Q. Do you necessarily agree with every opinion that's
25 voiced at those meetings?

1 A. No, sir.

2 Q. You testified that there was some discussion about
3 whether parents should be notified if their son or daughter
4 requests that a site be unblocked?

5 A. Yes.

6 Q. Did the board take any action to limit or require
7 parental approval before a site was unblocked?

8 A. No.

9 Q. Has the board ever taken such action?

10 A. No.

11 Q. And it was an idea espoused by one of seven board
12 members?

13 A. Yes.

14 Q. Okay. And you testified at that August meeting of the
15 board that you did not have legal counsel available to give you
16 some assistance on some of these issues; is that correct?

17 A. That's correct.

18 Q. And subsequent to that, did you obtain an opinion about
19 getting parental consent?

20 A. Yes, we did.

21 Q. And was there any change made to the board's action
22 because of that input?

23 A. No, there was not.

24 Q. Now, the items within the sexuality part of the
25 filter -- now I'm talking about the customized aspect of the

1 filter, plus the URL Blacklist. Am I correct with the
2 statement that the customized process makes assessments, looks
3 at websites and makes decisions before they ever get to URL?

4 A. That is my understanding.

5 Q. Okay. Some sites are marked as white sites and they're
6 open and available to everybody; is that correct?

7 A. Correct.

8 THE COURT: Would you hold on a minute? I want to
9 review this.

10 I want to make sure I understand that. Somehow
11 there is a human component that looks at the websites before --

12 MR. MICKES: Yes, ma'am.

13 THE COURT: -- Blacklist kicks in?

14 MR. MICKES: It's maybe an easier explanation to say
15 that there's this two-step process. The first step is the
16 customized process. In that process a human, it would be one
17 of the -- the net administrator who will testify or one of the
18 three or four employees that works for him, they will look at
19 the sites and they will make a decision of whether it's
20 perfectly fine and it will go on the whitelist. I keep doing
21 that. They will make a decision --

22 THE COURT: So for, before a request is made --

23 MR. MICKES: Yes.

24 THE COURT: -- when they're setting the system up,
25 they look at all of the websites that are available in the

1 world and then they decide?

2 MR. MICKES: Well, I think, Your Honor, they're
3 focusing on websites that there have been some inquiry about
4 because you're right --

5 THE COURT: So this is just --

6 MR. MICKES: -- there's hundreds of thousands,
7 there's hundreds of thousands that come online and they
8 couldn't do that.

9 THE COURT: So just if there's an inquiry, it's
10 customized.

11 MR. MICKES: And they will look at it and within 24
12 hours they make that decision, it never goes to URL.

13 THE COURT: If there's an inquiry.

14 MR. MICKES: Yes.

15 THE COURT: But otherwise that's the default
16 position.

17 MR. MICKES: That's correct. If what happens is
18 we've looked at it and it's something that we haven't cleared
19 before, it would go to URL. But other than that, that's the
20 first human step of the confirmation process.

21 THE COURT: Maybe I --

22 MR. MICKES: It doesn't go right into this computer
23 and the computer spits out black or white. There's a human
24 element on top of that, and you'll hear testimony from the
25 network administrator that one of the reasons to do that was to

1 reduce the amount of overblockage.

2 THE COURT: Okay. So I'll wait until I hear from
3 the technological expert.

4 MR. MICKES: Great. Thank you.

5 BY MR. MICKES:

6 Q. There was a question about whether you had to get
7 permission to unblock -- I don't want to mess up the -- LGBT
8 sites. Does any site that's blocked, whether it's LGBT or
9 whether it's the Mormon Church or whatever it is, any site
10 that's blocked, the process is the same, isn't it?

11 A. Yes.

12 Q. So there's not a special program that says, all LGBT
13 sites have to go through a special process.

14 A. No, there is no special process.

15 Q. When a request is made to unblock a closed site, LGBT
16 sites are treated the same way any other blocked site would be;
17 is that correct?

18 A. Correct.

19 MR. MICKES: Your Honor, that's all the questions I
20 have for this witness, but I would like to reserve the witness
21 to put on in the defendants' case.

22 THE COURT: All right. As you can tell, we're
23 getting very short on time.

24 MR. MICKES: We hope to save you some time.

25 THE COURT: Anything further?

1 MR. BLOCK: Just a housekeeping matter.

2 THE COURT: Anything further for the witness?

3 MR. BLOCK: I wanted to introduce into evidence the
4 exhibits that the witness consulted during the hearing that I
5 forgot to move, unless there are any objections.

6 MR. MICKES: No objection.

7 THE COURT: You have to list them for my courtroom
8 deputy. She won't know otherwise.

9 MS. MANGER: Exhibit P14, Exhibit P30.

10 COURTROOM DEPUTY: I'm trying to find it on the
11 list.

12 MS. MANGER: Oh, I'm sorry. I'll wait.

13 COURTROOM DEPUTY: I'm sorry. P14?

14 MS. MANGER: Exhibit P30.

15 COURTROOM DEPUTY: All right.

16 MS. MANGER: Exhibit P33.

17 COURTROOM DEPUTY: P33 was already admitted.

18 MS. MANGER: And Exhibit P34.

19 COURTROOM DEPUTY: It was already admitted.

20 MR. BLOCK: No further questions, Your Honor.

21 THE COURT: Anything further?

22 MR. MICKES: No, Your Honor, I'll reserve.

23 THE COURT: Thank you. You may step down.

24 MR. ROTHERT: Your Honor, plaintiffs have no more
25 witnesses, but we would like to move for admission of the five,

1 for five of the affidavits that were filed with the memorandum
2 and supplemental memorandum.

3 THE COURT: What are the numbers?

4 MR. ROTHERT: Yes, they are marked as P22 is the
5 declaration of Jody Huckaby, the Executive Director of PFLAG;
6 P23 is Marianne Duddy-Burke, the Executive Director of Dignity;
7 P24 is the declaration or affidavit of Jason Marsden, Executive
8 Director of the Matthew Shepard Foundation; Exhibit P25 is the
9 declaration of Shane Windmeyer, Executive Director of Campus
10 Pride; and Exhibit P58 is the declaration of Jane Doe.

11 MR. MICKES: My only objection would be, Your Honor,
12 that these individuals are not here, so I couldn't
13 cross-examine them on these affidavits. I'm certainly not
14 going to consent.

15 THE COURT: As I recall from my hearing on Tuesday,
16 affidavits can be considered in a preliminary injunction
17 hearing and, therefore, I will admit them.

18 MR. ROTHERT: Thank you.

19 (Plaintiffs' Exhibits P22, P23, P24, P25, and P58 were
20 admitted into evidence.)

21 THE COURT: Okay. Let's go ahead, we'll take a
22 15-minute break. I need to give my court reporter some time.

23 (A recess was taken from 10:24 a.m. to 10:39 a.m.)

24 THE COURT: Defendants, you may call your first
25 witness.

1 MR. MICKES: Your Honor, prior to calling the first
2 witness, the parties entered into a stipulation that I think is
3 kind of critical at this point.

4 It's four sentences long. And it begins -- to focus
5 our case back on what happened at Camdenton, this is the only
6 individual. The other plaintiffs are publishers of websites.
7 This is the only individual that's named. And this says,
8 plaintiff Jane Doe has never tried to access a website on the
9 Camdenton R-III School District computer which was --

10 THE COURT: You don't need to read it. I've already
11 read it.

12 MR. MICKES: Okay, great. Thank you, Your Honor.
13 Then I would call Mr. Cowen.

14 - - -

15 RANDAL COWEN,
16 being first duly sworn by the courtroom deputy, testified as
17 follows:

18 - - -

19 DIRECT EXAMINATION

20 By Mr. Mickes:

21 Q. Mr. Cowen, would you state your full name for the
22 record, please?

23 A. Randal Cowen.

24 Q. And Mr. Cowen, you've been employed by the Camdenton
25 School District since 1999; is that correct?

1 A. Yes.

2 Q. And your initial position was that of a technology
3 technician?

4 A. Yes.

5 Q. And in 2003 you received a promotion. And what
6 position were you promoted to?

7 A. Network Administrator.

8 Q. And can you briefly for the court describe what your
9 duties are as Network Administrator in the Camden School
10 District?

11 A. As Network Administrator, my duties are to support and
12 maintain the district's technology systems, basically anything
13 networking, computer-wise, television.

14 Q. Software, hardware?

15 A. Software, hardware.

16 Q. Filtering systems?

17 A. I've explained it in some occasions that anything that
18 takes a battery or plugs into a wall, they call me for help.

19 Q. And do you supervise any other district employees in
20 carrying out your duties?

21 A. Yes.

22 Q. And how many?

23 A. Four.

24 Q. And does Camden have a filtering system on its
25 internet?

1 A. Yes, we do.

2 Q. And how long has that filtering system, a filtering
3 system been in existence in the district?

4 A. Since before my employment.

5 Q. And can you tell the court briefly why a filtering
6 system is necessary for your internet?

7 A. To protect children and minors from any harmful
8 content.

9 Q. And this is mandated by federal law, CIPA?

10 A. Yes, sir.

11 Q. And during the time that you have been a network
12 administrator, have there been changes in the district's
13 filtering system?

14 A. Yes.

15 Q. And can you describe for us that transition that the
16 district went through?

17 A. Initially when I started in '99, we used Novell
18 BorderManager, and we used SurfControl for their content
19 filtering solution.

20 Approximately 2004, I believe it was, we --
21 SurfControl was going to increase their prices for their
22 content filtering solution, and we started looking into
23 alternatives to help maintain that system because sometimes it
24 can be a very complicated and time-consuming system. We
25 explored options from Darby Works, MOREnet, and Cdoc in Osage

1 Beach, Missouri.

2 And at that time, in 2004, we chose to take on Cdoc
3 as a provider for internet filtering. And to the best of my
4 knowledge, they had used URL Blacklist. And after 2004, I
5 believe it was November 2009, our district was growing, and we
6 had requested from MOREnet, Missouri Research and Education
7 Networks, additional bandwidth to support the internet needs.
8 And at that time, the Cdoc solution was not meeting our needs.
9 The appliance was slower than we needed for the bandwidth that
10 we needed for the district, and in some cases it actually did
11 some overblocking and we had no ability to completely bypass
12 the filters in certain times of need.

13 So in 2000 -- in, I would say in March to June of
14 2010, after notifying MOREnet we needed additional bandwidth
15 and after notifying Cdoc that their product was not meeting our
16 needs, we started seeking alternatives again. And we notified
17 Cdoc that their solution needed some changes. We reached out
18 to MOREnet to look at their solutions they had.

19 Q. What is MOREnet, just for the sake of the record?

20 A. MOREnet is Missouri Research and Education Networks,
21 and it is an extension of MU, I believe --

22 Q. Okay.

23 A. -- that provides internet and support to schools and
24 libraries across Missouri.

25 Q. And at the time that you made that -- what was your

1 ultimate decision that you made in the spring of 2010?

2 A. In the spring of 2010 our ultimate decision was we had
3 evaluated DeepNines, which was an excellent product, but we
4 wanted something that we could very tightly integrate. The
5 Cdoc system we were allowed to tightly integrate with our work
6 order system which worked excellent for allowing people to open
7 websites and us to track those requests. And the DeepNines
8 product and the MOREnet products didn't allow us to do any kind
9 of tight integration work like that.

10 So our ultimate decision was to build our own
11 appliance with our own custom filtering solution that would
12 meet our needs and that we could integrate with other systems.

13 Q. Okay. And tell us if you would about how you
14 customized this system and how that interacted in any way with
15 URL Blacklist.

16 A. The way we customized it is, first of all, the very
17 first thing we did was we created whitelists and blacklists
18 that superseded all of any content filtering mechanisms we
19 would have had in place.

20 If a request had come in that we had been requested
21 to deny, it would hit a blacklist and be immediately kicked out
22 of the rules. And we also implemented a whitelist that any
23 request that was asked of us to open to the district we could
24 hit that list and immediately open that site to anybody in the
25 district.

1 THE COURT: Could I interrupt a minute? When you
2 talk about a request, you're just talking about somebody on a
3 computer somewhere trying to access a website?

4 THE WITNESS: Yes.

5 THE COURT: Is that what you mean by the term
6 request?

7 THE WITNESS: Yes. The solution we implemented has
8 a request system. That tight integration that we have, when a
9 person is denied a website, it prompts them with some
10 information that they have been blocked because of one of these
11 categories for these reasons. And then they have a button that
12 they can click, they click request open, and it's a short form.
13 They just fill out any comments or anything they want, and that
14 request immediately comes to our department, and we can review
15 the site manually and allow it or deny it.

16 THE COURT: Okay. But that's after it's been
17 filtered by URLBlacklist.com, then there's a request to access
18 it.

19 THE WITNESS: Yes. Yes, ma'am.

20 BY MR. MICKES:

21 Q. And once a site is looked at by, I guess, human eyes in
22 your department and put on a whitelist, that's it, there's no
23 more, it never goes, never sees URL or doesn't see anything
24 else?

25 A. That's it, it's immediately kicked out.

1 Q. You have the ability to override URL if you see a site
2 that they block and you look at it and say, no, there's nothing
3 wrong with this, then it goes on your whitelist, it never sees
4 URL again; is that correct?

5 A. Can you please repeat that?

6 Q. Yeah. If you make a determination, it may be that URL
7 had blocked the site and you make -- and a request is made and
8 then you put human eyes on it and you say there's nothing
9 that's in violation of CIPA, we're going to unblock that, and
10 it goes on your whitelist; is that correct?

11 A. Yes.

12 Q. And then after it goes on the whitelist, there's never
13 any review by URL Blacklist again.

14 A. No.

15 Q. Now, there's been some questions about that, and I want
16 to make sure we're clear about that. Obviously -- you know,
17 just tell me, what's your estimate of the number of --

18 THE COURT: I want to make sure I understand. So it
19 never goes through the same filtering process, or does it go
20 through two stages, it goes through the blacklist,
21 automatically kicks on to your whitelist, and then comes back
22 in?

23 THE WITNESS: The way you have to look at it is from
24 a top down, as if you're reading from the top of a page down.
25 And you're looking for a match. And if you are -- and if you

1 see the word you're looking for at the top of the page and
2 that's our whitelist at the top of the page, it's immediately
3 just going to ignore the rest of the rules and allow the
4 website through.

5 THE COURT: Okay. So it doesn't go to the
6 blacklist.

7 THE WITNESS: It doesn't go down through the rest of
8 the list, no.

9 THE COURT: But until somebody asks for it to be
10 unblocked, it will be blocked by Blacklist.

11 THE WITNESS: If it is blocked by URL Blacklist, it
12 will proceed down through all of the rules; and if URL
13 Blacklist has it on one of their blacklists, one of their
14 databases, then, yes, it will be blocked.

15 THE COURT: I understand now. Thank you very much.

16 BY MR. MICKES:

17 Q. Now, approximately how many new websites come online
18 within, say, any normal week?

19 A. Hundreds of thousands, I would say.

20 Q. So is there any classification -- strike that.

21 Do you treat requests to unblock homosexual/lesbian
22 sites different than any other sites?

23 A. No, sir.

24 Q. And every site is treated the same --

25 A. Yes.

1 Q. -- if it's blocked: Violent sites, racial sites, hate
2 speech sites. And then when somebody unblocks it, then you put
3 your eyes on it and make a decision; is that correct?

4 A. Absolutely.

5 Q. And homosexuals or related groups are not treated any
6 different in that respect; is that correct?

7 A. Correct.

8 Q. Now, once you -- back in 2010 when you put this
9 customized system together, did you evaluate it by running it
10 back through the system?

11 A. Yes. Actually, we had sent out e-mails near the end of
12 the school year in 2009 that we were going to put filtering
13 boxes in place for temporary portions of time. We wanted to
14 make people aware. Communication has been a big push in our
15 district, and we wanted to communicate that things might be a
16 little different for a temporary point of time.

17 And we had actually implemented the DeepNines
18 product full force into the district. Everybody in the
19 district was operating through that device. And we had also
20 after construction of our box done the exact same procedure,
21 put that in place and allowed everybody to access the internet
22 through that device. And we analyzed it for processor
23 utilization, what load the computer was running on and how much
24 traffic we could flow through the device.

25 Q. So the school community and the community at large had

1 an opportunity to provide input on your customized project?

2 A. Yes.

3 Q. Did you get any complaints or negatives, or was there
4 any negatives about your, when you evaluated your new program?

5 A. No, not at all.

6 Q. Okay. And in implementing your customized filter
7 system, was it your goal to reduce the amount of overblocking
8 that URL sometimes got involved in?

9 A. Yes. Our previous solution used not only a blacklist,
10 but it also used keyword and key phrases. And in my
11 experience, the keyword and key phrase was a very tricky kind
12 of scenario to toy with, and we wanted to reduce that
13 overblocking, so we disabled in our product all keyword and key
14 phrase blocking, and we relied solely on human intervention or
15 URL Blacklist.

16 THE COURT: And when you say we wanted to prevent
17 overblocking in our product, are you referring to your
18 whitelist?

19 THE WITNESS: In our solution, the entire solution.

20 THE COURT: You used the term -- well, it's
21 important for me to understand the difference.

22 So when you say your product, are you saying your
23 whitelist and it goes, it opens up things; or are you saying
24 your whitelist plus your Blacklist, Blacklist.com? Is your
25 product the whole thing, including Blacklist.com?

1 THE WITNESS: Yes.

2 THE COURT: Or when you use -- it is. Okay. I just
3 wanted to know what he means when he says our product.

4 BY MR. MICKES:

5 Q. And as a result of that, using the custom product under
6 the URL, are you unblocking more sites than ever?

7 A. Yes, we unblock all sorts of sites every day.

8 Q. And over the past five or six years, approximately how
9 many requests have you had to unblock sites?

10 A. 2000.

11 Q. And approximately how many of those have been
12 unblocked?

13 A. I would say 80 percent.

14 Q. And what can you tell me about the remaining 20
15 percent?

16 A. The remaining 20 percent are usually advertisements
17 which we block normally, and anything beyond that would just be
18 students being a little goofy and submitting things they
19 probably shouldn't.

20 Q. Okay. And what's the problem with advertising?

21 A. Advertising can sometimes pop up different windows on
22 your system, and the next thing you know you're into a website
23 you didn't intentionally mean to go to.

24 Q. What categories of material do you block right now?

25 A. We block several categories. Some of those are

1 advertisements, pornography, mixed adult, and sexuality.

2 Q. Okay. And sexuality is designed to capture material
3 that's not covered by other filters?

4 A. Yes.

5 Q. Could you give us some examples of some of the sites
6 that you pick up and block under sexuality that would have gone
7 through the other blocks?

8 A. Sexuality --

9 THE COURT: What other blocks?

10 MR. MICKES: Well, pornography and obscenity.

11 There's three -- CIPA requires blocking of three materials.

12 THE COURT: Okay.

13 MR. MICKES: Pornography, obscenity --

14 THE COURT: Are we talking about blocking through
15 the customized system, which is creating a whitelist versus a
16 blacklist, or are we talking about Blacklist.com?

17 MR. MICKES: We're talking about maybe a product
18 would be blocked, would not be blocked under the pornography or
19 the obscenity. And I was asking whether there were any sites
20 that were picked up with the sexuality site, the filter.

21 THE COURT: Blocked by what?

22 MR. MICKES: Blocked by -- if it hadn't been through
23 the system before, it would be blocked by URL.

24 THE COURT: So this is something that had gone
25 through Blacklist and got through?

1 MR. MICKES: Right. And was picked up on another
2 filter, and that was my question.

3 BY MR. MICKES:

4 Q. What kinds of things -- if you could give me a couple
5 of examples of what kind of things that you picked up through
6 your sexuality filter.

7 A. I believe at the time that we had went through there,
8 the sexuality filter, some material that was not blocked by the
9 other categories, I believe there was imasturbate.com and
10 ipenis or something like that.

11 Q. Okay.

12 THE COURT: And how did you -- just kind of explain
13 to me how it came to your attention about those sites and what
14 you did to, in fact, block them.

15 THE WITNESS: We rely on URL Blacklist to -- our
16 blacklist and whitelist is meant for our customized purposes.
17 For example, a student that is over here playing online poker
18 and not staying on task, a teacher might request through e-mail
19 or however, please block onlinepoker.com. And then that would
20 be part of our custom filter there. Blacklist, we're no longer
21 allowing onlinepoker.com.

22 Just like with our whitelist, a teacher may say, I
23 need this particular video from YouTube on mitosis because I'm
24 going to show this in my science class. We don't globally
25 unlock YouTube because there's other content that could be

1 harmful on YouTube, so we have the ability to unblock that
2 particular one video from YouTube for that classroom.

3 And then whatever does not fall in our black and
4 whitelists, we rely on URL Blacklist's set of filters, and
5 sexuality --

6 THE COURT: But this was talking about ipenis or
7 some sexually explicit website. How does that --

8 THE WITNESS: Those have fallen into URL Blacklist's
9 sexuality category. They weren't categorized into pornography
10 or any other category. They were at the time only in
11 sexuality.

12 THE COURT: Well, how did it come to your attention
13 is what I'm asking you. How did it come to your attention,
14 that site?

15 THE WITNESS: We were asked to evaluate what kind of
16 material could slip through if we removed the sexuality filter
17 completely but still allowed the pornography and mixed adult
18 categories to stay in place.

19 THE COURT: So was this as part of this litigation?

20 THE WITNESS: Yes.

21 THE COURT: Okay. Go ahead. I'm just trying to
22 figure out how it came to your attention.

23 MR. MICKES: Your Honor, it's a little complex.

24 BY MR. MICKES:

25 Q. Have you taken the opportunity to review white sites or

1 sites that are open to determine the LGBT sites that are open
2 in Camden School District?

3 A. Yes.

4 Q. And have you prepared just a sample list of those?

5 A. Yes.

6 Q. Let me hand you what's been marked as D7. Would you
7 review that for me, please?

8 Is that an accurate list of the, what you believe to
9 be in your opinion LGBT sites that are open on the Camden
10 School District website?

11 A. Yes.

12 MR. MICKES: Your Honor, I would like to ask that
13 Defendants' 7 be received.

14 THE COURT: Any objection?

15 MR. BLOCK: No, Your Honor.

16 THE COURT: It's admitted.

17 (Defendants' Exhibit D7 was admitted into evidence.)

18 BY MR. MICKES:

19 Q. When blocking occurs, the site is blocked and a faculty
20 member or student would like to unblock that, can you tell us
21 how that happens? How do you go about making the request to
22 unblock?

23 A. The first thing when they get the block, they're
24 prompted with the text that says they're blocked from this
25 material for these reasons. And they have a button on that

1 screen which they can click, which then takes them to a short
2 form that they can explain any kind of, or add any kind of
3 comments to why they would want it unblocked.

4 And then after they click submit on that form, it
5 immediately comes to our department for review. They also have
6 means by e-mailing any one of those --

7 Q. Let's hold on e-mailing the superintendent and just
8 deal with blocking that goes on the student's website.

9 MR. MICKES: Your Honor, I give you Defendants'
10 Exhibit No. 1.

11 Q. Mr. Cowen, giving you Defendants' 1. Can you identify
12 that?

13 A. Yes. This is the message that they get eventually when
14 they hit a site that is blocked.

15 Q. Okay. And once that -- when the student wants to
16 request to unblock, where does it go?

17 A. When they click this request open button, it goes to
18 page 2.

19 Q. Yes?

20 A. On which they can add any comments. And after they
21 click submit, it comes straight to our department for manual
22 review.

23 Q. Okay. And manual review is you put your eyes on the
24 request and make a determination whether it's going to be
25 blocked or unblocked; is that correct?

1 A. Yes.

2 Q. And the -- there's a place on the second page for a
3 user's name. Does that require a student or a faculty member
4 to list their name?

5 A. No, it does not.

6 Q. What can they list by username?

7 A. They can list anything they want. If they wanted to
8 enter 12345, it will accept it.

9 Q. So you could have any number -- you could choose your
10 dog or you could choose anything you wanted to be your
11 username.

12 A. Yes.

13 Q. And regardless of what you put in this block, would you
14 still put the eyes on and make a determination whether it was
15 blocked or unblocked?

16 A. Yes, we do.

17 Q. And how would the individual that had made the request
18 to unblock find out if the site had been unblocked?

19 A. They can either try to visit the site later and the
20 site will be open, or they can visit our website and go to the
21 technology section, and there's a link in there that, my
22 requests, and they could enter their dog's name or 12345,
23 whatever they entered, to review all of the requests they ever
24 submitted.

25 Q. So the option to waiting and then running it again

1 would be to go on the district's website, technology, put Fido
2 in, and see if it was opened or unopened, correct?

3 A. Correct.

4 Q. Mr. Cowen, is Defendants' Exhibit 1, is that an
5 accurate copy of the popup that appears when a student requests
6 that a site be unblocked?

7 A. Yes.

8 MR. MICKES: Your Honor, I would like to move that
9 Defendants' Exhibit 1 be received.

10 MR. BLOCK: No objection.

11 THE COURT: It's admitted.

12 (Defendants' Exhibit D1 was admitted into evidence.)

13 BY MR. MICKES:

14 Q. And is there an alternative to using the popup system?

15 A. Yes.

16 Q. And what is the alternative?

17 A. Alternatives that are commonly used in our department
18 is a teacher will just e-mail us requests. I know there's,
19 they can also make a written request to the superintendent, and
20 we'll review that.

21 Q. If there's a decision that is made that a faculty
22 member or student's site is unblocked, do they have a provision
23 under board policy to appeal that to the Board Of Education?

24 A. Restate the question, please?

25 Q. Yeah. If a site is requested to be unblocked but a

1 decision is made by your technology group or the superintendent
2 to not unblock it, could they appeal that decision to the Board
3 of Education?

4 A. Yes. Our work order system that this works through,
5 they can actually, when they review their requests online, they
6 can add additional comments supporting their request, if
7 needed, and reopen the request. Or they can, again, write a
8 letter to the superintendent or send us an e-mail.

9 Q. In your opinion, Mr. Cowen, would there be any problems
10 with eliminating the district's customized sexuality filter?

11 A. Yes.

12 Q. And did you make any effort to find out what kind of
13 harm would result?

14 A. Yes.

15 Q. What did you do?

16 A. We temporarily on a test basis in a test environment
17 disabled that sexuality filter to see what kind of content you
18 could receive after those filters were disabled.

19 Q. And what was the result?

20 A. Several websites that you could get to instantly.

21 THE COURT: And the customized system includes
22 Blacklist?

23 THE WITNESS: Yes, it does.

24 THE COURT: Okay.

25 MR. MICKES: I have no further questions.

- - -

CROSS-EXAMINATION

By Mr. Block:

Q. Good morning, Mr. Cowen.

A. Good morning.

Q. I have a question about this D7 that we were looking at.

A. All right.

Q. It's your example of open district websites. How many of these are on the district's customized whitelist?

A. None of them.

Q. How many?

A. None of them.

Q. So how are they open?

A. They do not match on any of our lists or URL Blacklist's lists.

Q. So if let's say a pornography site happened to not match any of your customized lists or URL Blacklist, that would also be an open site, right?

A. It would be, but we also have technologies in place that we utilize to watch keywords and phrases that are capable of instantly alerting us to any kind of activity like that. In that case, we can sometimes catch a student instantly and call their teacher immediately.

Q. Okay. But just so I'm clear, no one at the school

1 district has looked at these sites and said, these are
2 appropriate, I want kids to have access to these LGBT
3 resources, right?

4 A. Right.

5 Q. Has anyone asked you to put any LGBT sites onto the
6 whitelist?

7 A. We had a request come in for Rainbow Domestic Violence.

8 Q. Do you remember who made that request?

9 A. The username that was entered was [REDACTED].

10 Q. Actually, I want to complete this line of questions
11 first.

12 Besides that -- so after this lawsuit was filed, did
13 anyone at Camdenton say, take a look at the Complaint, the LGBT
14 websites in the Complaint and if they're okay, put them on the
15 whitelist?

16 A. Please restate the question.

17 Q. Sorry. Since the time that this lawsuit was filed, did
18 anyone from the school say, take a look at the websites listed
19 in the Complaint as examples of LGBT-supported websites and, if
20 they're okay, put them on the whitelist?

21 A. We had received a letter that listed, I believe, four
22 or five websites that was requested to be opened. And I
23 believe one of them was opened, and there were three or four
24 that were not opened that we added to our whitelist that will
25 never again be reviewed by URL Blacklist's databases.

1 Q. Okay. And so that was in June?

2 THE COURT: I'm confused. Back to the first thing,
3 who were these requests from that you're referring to now?

4 THE WITNESS: The Rainbow Domestic Violence request?

5 THE COURT: Or any of the others that you just
6 identified.

7 THE WITNESS: The Rainbow Domestic Violence request
8 originated to the best of my knowledge from a student within
9 the district, and we reviewed that request and opened it. It
10 was a request that just wanted domestic violence with lesbians
11 and gays. And --

12 THE COURT: Then you referred to three or four other
13 requests.

14 THE WITNESS: I believe before the litigation
15 started, we had received a letter from the ACLU listing four
16 websites -- four or five websites, I'm sorry, I can't remember
17 the exact number -- that they wanted us to open or ensure that
18 were opened. And one of them at least was opened, and we
19 immediately opened the others.

20 THE COURT: And the question that was asked is after
21 the lawsuit was filed, but maybe I'm wrong about that. You go
22 ahead.

23 MR. BLOCK: That was --

24 THE COURT: That doesn't seem to answer the
25 question.

1 MR. BLOCK: Yeah, that was the question.

2 BY MR. BLOCK:

3 Q. So after the lawsuit, did anyone ask you to add any
4 other LGBT sites to the whitelist?

5 A. To the whitelist, no.

6 THE COURT: When you say asked, do you mean -- what
7 do you mean by asked?

8 Q. Did any Camdenon school official tell you to add other
9 LGBT sites to the list?

10 A. Beyond the information that we had received through the
11 letter, no, we had no additional requests.

12 Q. Did any Camdenon school official say, could you flip
13 through the list of sexuality websites, you know, and if you
14 see anything that obviously looks nonsexual, can you just add
15 it to the whitelist? Did anyone ask you to do that review?

16 A. No. I believe I was asked is it possible to go through
17 that. And, yes, it is possible, but it's a huge list, and it
18 consists of both domains and URLs.

19 THE WITNESS: Which a URL, Your Honor, is more of a
20 specific site, not just a set of sites. And to manually review
21 both the URLs and the domain lists for that category alone
22 would consume tons of time.

23 THE COURT: And category established by whom? Are
24 you again talking about Blacklist?

25 THE WITNESS: The sexuality category itself is

1 established by Blacklist, URLBlacklist.com.

2 BY MR. BLOCK:

3 Q. Do students need a user ID to log onto the internet?

4 A. No, but they can request one and a teacher can request
5 one for them.

6 Q. So is it possible to use the internet if you don't have
7 a user ID?

8 A. Yes.

9 Q. How do you do that?

10 A. You just walk up to a computer and begin using the
11 internet. It opens right up.

12 Q. And so what's the advantage of having a user ID?

13 A. The advantage of having a user ID is we can actually
14 target age groups and age appropriateness of content for users.
15 We assume a kindergartner or first grader or second grader is
16 going to sit down at that computer, so we enforce our most
17 stringent rules.

18 When we have seventh or twelfth or eighth grade when
19 it becomes age appropriate, we can put users into groups and
20 allow them more unlimited access.

21 Q. So if you don't have a user ID, you're in the
22 kindergarten group by default?

23 A. You're in the most strictest set of rules, yes.

24 MR. BLOCK: Okay. I have no further questions, Your
25 Honor.

1 THE COURT: Redirect?

2 MR. MICKES: I just have one.

3 - - -

4 REDIRECT EXAMINATION

5 By Mr. Mickes:

6 Q. Mr. Cowen, referring to D7, I was a little unclear.

7 This was the exhibit with the LGBT sites. These are open sites
8 on the Camdenton network?

9 A. Yes.

10 Q. Okay. And a student could access these without --
11 they're not blocked, they could access them anytime they
12 wanted?

13 A. Correct.

14 MR. MICKES: That's all.

15 THE COURT: How do they get open?

16 THE WITNESS: These do not match on any of the
17 lists, these are open sites. They have not been categorized by
18 URL Blacklist, and they have not come to our attention as
19 appropriate or inappropriate, they're just out there.

20 THE COURT: Any further questions by either party?

21 MR. BLOCK: I have just one question.

22 - - -

23 RECROSS-EXAMINATION

24 By Mr. Block:

25 Q. Based on your knowledge of URL Blacklist, where do you

1 think this website, lgbtbar, what category in URL Blacklist
2 would you expect lgbtbar to go into once URL Blacklist puts it
3 in its database?

4 A. Well, instantly, being a technology guy, when I see
5 lgbtbar, the bar, I would say, okay, are we referring to a law
6 bar, or are we referring to a bar that might have some kind of
7 pictures or material that would be inappropriate for a second
8 grader or first grader?

9 So I would manually review that site. And if it was
10 just a site relating to law, then I would open that if I was
11 asked to. But if I was asked by URL Blacklist to attempt to
12 categorize it, I don't believe that would fit in any of the
13 categories that they have.

14 MR. BLOCK: No further questions.

15 MR. MICKES: I have one more witness, Your Honor.

16 THE COURT: You may step down. Thank you very much.
17 Go ahead and call your witness.

18 MR. MICKES: Mr. Hadfield.

19 (Timothy Hadfield was duly sworn by the courtroom
20 deputy.)

21 THE COURT: Oh. I have one more question of your
22 last witness.

23 MR. MICKES: Yes, ma'am.

24 THE COURT: Let's go ahead with this one and then
25 we'll go back.

1 MR. MICKES: If you want to talk, ask Mr. Cowen a
2 question now, that's fine.

3 THE COURT: I would.

4 MR. MICKES: Mr. Cowen? Mr. Cowen? Do you want him
5 to be seated?

6 THE COURT: Yes. I apologize.

7 MR. MICKES: No, that's fine.

8 THE COURT: I had taken a note about it, and then I
9 was watching the clock.

10 (Witness Randal Cowen re-took the witness stand and
11 testified further as follows:)

12 THE COURT: When a student goes on Google, can
13 they -- and tries to search for something, will the filter
14 alter the search that they get from Google?

15 THE WITNESS: No, it does not.

16 THE COURT: So Google would permit you to identify
17 all of the websites.

18 THE WITNESS: Yes.

19 THE COURT: But you could not open the website if it
20 was filtered out.

21 THE WITNESS: Correct. You would click on the
22 result, and then you would see Exhibit D1.

23 THE COURT: So all of the pornography websites will
24 come up on Google.

25 THE WITNESS: Yes.

1 THE COURT: You just can't open the website.

2 THE WITNESS: Correct.

3 THE COURT: Okay. Any questions by either party?

4 MR. BLOCK: No, Your Honor.

5 THE COURT: You may step down.

6 MR. MICKES: Thank you. Mr. Hadfield. Due to time
7 and he's already been questioned a little bit, we'll try to
8 move through this.

9 - - -

10 TIMOTHY HADFIELD,
11 having been previously sworn by the courtroom deputy,
12 testified as follows:

13 - - -

14 DIRECT EXAMINATION

15 By Mr. Mickes:

16 Q. During the time that you've been superintendent of
17 schools or you've worked there as assistant superintendent from
18 2007 to date, have you received any complaints about sites
19 involving gays, homosexuals or lesbians being unfairly blocked?

20 A. No.

21 Q. And I discount this lawsuit, but other than this
22 lawsuit.

23 A. No, sir.

24 Q. Okay. Have you had any demands from students or
25 faculty members to block stuff that's on there, complained

1 about what's open to the kids?

2 A. We may have a request that might come in from a teacher
3 about a site that might be questionable that may go on a
4 blacklist later on, but then that's very, that's not a frequent
5 occurrence.

6 Q. Would this involve lesbians, gays, LGBTs?

7 A. No.

8 Q. Okay. I think we've had Mr. Cowen take us through this
9 pretty well on how this system works. In the spring of 2001 --
10 2011, did you receive an inquiry from a Mr. Hill representing
11 himself as associated with the ACLU?

12 A. Yes.

13 Q. And did he request information about the filtering
14 system?

15 A. He did.

16 Q. And did you prepare a response?

17 A. Yes, I did.

18 Q. Would you review that to ensure its accuracy?

19 A. This is accurate.

20 Q. Okay. And No. 2, it looks like he asks for five, asks
21 the status of five websites, and it looks as if one was open
22 and four were blocked. Is that accurate?

23 A. Yes.

24 Q. And the one that was opened, is it It Gets Better
25 Project?

1 A. Yes.

2 Q. And to your knowledge, these five, one open and the
3 others closed, are LGBT-type websites?

4 A. That is my understanding.

5 Q. And you responded to that May 19, 2011?

6 A. Yes.

7 MR. MICKES: Your Honor, I would like to ask that
8 Defendants' Exhibit No. 2 be received.

9 THE COURT: It's admitted.

10 (Defendants' Exhibit D2 was admitted into evidence.)

11 BY MR. MICKES:

12 Q. After you received, you responded to Mr. Michael Hill,
13 did you take any action with respect to the four sites that
14 were LGBT sites that were blocked?

15 A. We -- based on review, we opened those sites.

16 Q. Okay. So you went through your, you went through your
17 procedure and opened all of those sites.

18 A. Correct.

19 Q. Okay. Mr. Hill is affiliated with the ACLU?

20 A. That would be my understanding, yes.

21 Q. And these sites were unblocked well before the present
22 lawsuit was filed?

23 A. Yes.

24 Q. Do you know whether or not the information concerning
25 these websites were being unblocked was communicated to the

1 ACLU?

2 A. It was communicated.

3 Q. And the second page at the lower left-hand side, does
4 that indicate that you received a copy of that?

5 A. Yes.

6 Q. Okay. And you've read this letter. The copy of the
7 letter that you received is an accurate copy?

8 A. Yes.

9 Q. And does it indicate to Anthony Rothert, who describes
10 himself as the Legal Director of the American Civil Liberties
11 Union of Eastern Missouri, that this information about
12 unblocking of the sites that they requested was, in fact did
13 happen?

14 A. Yes.

15 MR. MICKES: Your Honor, I would like to ask that
16 this, Defendants' Exhibit 3 be received.

17 THE COURT: It's admitted.

18 (Defendants' Exhibit D3 was admitted into evidence.)

19 BY MR. MICKES:

20 Q. And, again, this letter was dated June 6, 2011. That
21 was well before the instant lawsuit that we're here today was
22 filed?

23 A. Yes.

24 Q. Now, the popup phase of the unblocking, do you know how
25 long that's been in place?

1 A. It was my understanding that it's been in place for
2 seven years.

3 Q. Okay. And as part of CIPA, the Children's Internet
4 Protection Act, is the district required to develop an internet
5 safety policy?

6 A. We are.

7 Q. And does the district have such a policy?

8 A. We do.

9 Q. And was it recently modified to include the popup kind
10 of procedure?

11 A. It was.

12 Q. Let me hand you what's been marked Policy EHB. And can
13 you tell the court who develops this policy?

14 A. Our policies are typically developed by the Missouri
15 School Board Association. But, again, as a district, you have
16 the ability to modify those policies to make them fit your
17 local needs.

18 Q. Okay. And directing your attention to page 4 of 8 of
19 that Policy EHB, does the policy indicate that the district's
20 technology resources are not a public forum for expression of
21 any kind and are considered to be a closed forum to the extent
22 allowed by law?

23 A. It does.

24 Q. And that's been a part of your policy since it was
25 provided by the Missouri School Boards Association?

1 A. That's correct.

2 MR. MICKES: Your Honor, I would like to offer
3 Defendants' 4.

4 THE COURT: It's admitted.

5 (Defendants' Exhibit D4 was admitted into evidence.)

6 BY MR. MICKES:

7 Q. Your policies at Camdenton and with the Missouri School
8 Board Association also have procedures that go with policies;
9 is that correct?

10 A. That's correct.

11 Q. Okay. I'm going to hand you what's been marked as
12 Technology Usage, EHB-AP, and I take it the AP refers to
13 administrative procedure?

14 A. It does.

15 Q. And is it an accurate copy of the district's EHB-AP
16 procedure?

17 A. Yes, it is.

18 Q. And were there some changes made to that recently?

19 A. There were.

20 Q. And those changes are at the bottom of the second to
21 the last page?

22 A. Yes.

23 Q. And on into the second?

24 A. Yes.

25 Q. And this allows -- this allows, as an alternative to

1 the popup it allows a request to go directly to your office?

2 A. That is correct.

3 Q. And it allows for an appeal -- for a dissatisfied staff
4 member or a student, it provides for an appeal to the Board of
5 Education?

6 A. Yes.

7 MR. MICKES: Your Honor, I would like to ask that
8 Defendants' No. 5 be received.

9 THE COURT: It's admitted.

10 (Defendants' Exhibit D5 was admitted into evidence.)

11 BY MR. MICKES:

12 Q. Let me hand you Policy IIAC-R. Can you identify that
13 policy for us?

14 A. This is Policy IIAC-R, Instructional Media
15 Centers/School Libraries/Internet Access, and subtitled
16 Selection and Reconsideration of Materials.

17 Q. And you've had a policy regarding challenged library
18 material and textbook material for years?

19 A. For years.

20 Q. Yeah. And so the change that you made was to basically
21 incorporate the same language that we talked about in Exhibits
22 D6 and D5 at the bottom to allow a vehicle to appeal to you?

23 A. We did.

24 Q. And that was just to be consistent with what we're
25 doing?

1 A. Yes.

2 MR. MICKES: And if there's no objections, Your
3 Honor, I'd like to ask that Defendants' 6 be received.

4 THE COURT: It's admitted.

5 (Defendants' Exhibit D6 was admitted into evidence.)

6 BY MR. MICKES:

7 Q. And finally, Dr. Hadfield, has any -- has the board or
8 anyone else ever directed you to incorporate separate
9 procedures for unblocking websites related to African
10 Americans?

11 A. No.

12 Q. Females?

13 A. No.

14 Q. Disabled people?

15 A. No.

16 Q. Lesbians, gays, homosexuals?

17 A. No.

18 Q. They're all treated the same under your filtering
19 system and unblocking system?

20 A. Correct.

21 Q. And have you ever given an order to any of your
22 subordinates to take those kind of discriminatory actions?

23 A. No.

24 MR. MICKES: No further questions, Your Honor.

25 THE COURT: I have a question on these requests.

1 Are they individual? So if I want to go out, I do a Google
2 search and I want to go out to a site, okay? That's when the
3 request occurs --

4 THE WITNESS: Yes.

5 THE COURT: -- to open it.

6 THE WITNESS: Yes, ma'am.

7 THE COURT: Is there a process by which you could
8 simply request that all of the sites, for example, that relate
9 to gay, lesbian, and bisexuals that are in the society section
10 of the DMOZ could be opened?

11 THE WITNESS: I believe a request could be made for
12 that.

13 THE COURT: But not through your automated system.

14 THE WITNESS: I believe in the comment section that
15 if that was put in there that that would be taken into
16 consideration, yes.

17 THE COURT: So in your automated system, somebody
18 could go in and request that.

19 THE WITNESS: They could, or they could request it
20 in --

21 THE COURT: In other words, a mass opening of
22 material, as opposed to the opening of a single website.

23 THE WITNESS: I believe that the popup would deal
24 with the specific website. But under the comment section, they
25 could put if you were talking about --

1 THE COURT: You could put anything in the comment
2 section, but it's designed to deal with a specific website.

3 THE WITNESS: Yes.

4 THE COURT: Any questions by --

5 MR. MICKES: No, Your Honor.

6 MR. BLOCK: I have some questions, Your Honor.

7 - - -

8 CROSS-EXAMINATION

9 By Mr. Block:

10 Q. At the end of your direct testimony, Mr. Hadfield, you
11 said that the district treats the unblocking procedures for
12 LGBT people and African Americans and women the same, right?

13 A. Yes.

14 Q. Is there a category in URL Blacklist that blocks all
15 material that's supportive of African Americans?

16 A. I do not know that.

17 Q. Is there a category in URL Blacklist that blocks all
18 materials supportive of women?

19 A. I do not know that.

20 Q. There's another issue I wanted to clear up, which is
21 that we looked at Exhibit D2, which is the letter you sent to
22 Mr. Hill in response to the Sunshine Act request. And you
23 talked before about how, according to the June 6th letter, four
24 of these websites were then opened up. Do you remember that?

25 A. I do remember that.

1 Q. But isn't it true that on May 19th after you wrote this
2 letter, you didn't take any steps to have those sites opened up
3 at that date, right?

4 A. That's correct.

5 Q. Isn't it true that you received a letter from the ACLU
6 on May 24th that asked for those sites to be opened up?

7 A. I was sent a letter to the best of my recollection
8 that, yes, there were four websites that were identified.

9 Q. Handing you Exhibit P18. Is this the letter?

10 A. Yes.

11 MR. BLOCK: I move for it to be admitted.

12 MR. MICKES: Sure.

13 THE COURT: It is admitted, P18.

14 (Plaintiffs' Exhibit P18 was admitted into evidence.)

15 BY MR. BLOCK:

16 Q. If you go to page 3 of the letter, do you see these
17 bullet materials, these six bullet points?

18 A. I do.

19 Q. And do you recall reading that, being informed that the
20 websites from the American Psychiatric Association and American
21 Academy of Pediatrics were blocked?

22 A. Yes.

23 Q. Do you recall the third bullet point that information
24 about don't ask don't tell is blocked?

25 A. Yes.

1 Q. Do you recall information from the CDC and NIH?

2 A. Yes.

3 Q. Okay. And you recall all of the stuff in the next two
4 bullet points too, to save time; is that right?

5 A. I do.

6 Q. When you received this letter, did you take any steps
7 to have any of these websites unblocked?

8 A. I did not.

9 Q. Handing you Exhibit P19, do you recognize this
10 document?

11 A. I do.

12 Q. And at the bottom, that's your CC, right, a copy was
13 given to superintendent Tim Hadfield, right?

14 A. Yes, sir.

15 MR. BLOCK: I move to have this entered, submitted.

16 MR. MICKES: Sure.

17 THE COURT: Admitted, 19.

18 (Plaintiffs' Exhibit P19 was admitted into evidence.)

19 BY MR. BLOCK:

20 Q. And this response was sent after consultation with you,
21 right?

22 A. Yes.

23 Q. And you got a copy of this response after it was sent.
24 Does it say anything there about any websites at all being
25 unblocked?

1 A. I do not see any.

2 Q. Had you made a decision to unblock any websites at that
3 time?

4 A. No.

5 Q. Isn't it true that you received a second letter from
6 the ACLU on May 31st, 2011?

7 A. I believe that's accurate, yes.

8 Q. And isn't it true that only after that second letter
9 did you finally decide to unblock those four specific websites?

10 A. I do not recall that, but that could be accurate, yes.

11 Q. But didn't take any other steps to make sure that
12 other LGBT-supportive information would be unblocked; is that
13 correct?

14 A. That would be correct.

15 MR. BLOCK: That's all the questions I have.

16 - - -

17 REDIRECT EXAMINATION

18 By Mr. Mickes:

19 Q. All of the websites that, LGBT that were requested by
20 the ACLU to unblock were put through the system; is that
21 correct?

22 A. Yes.

23 Q. And all of them were unblocked; is that correct?

24 A. I believe the --

25 Q. One was already unblocked.

1 A. One was already unblocked, and the others requested
2 were unblocked.

3 Q. And the letter dated June 6th, 2011, from my colleague,
4 Miss Helfrich, confirmed to the ACLU that these sites had been
5 unblocked; is that correct?

6 A. Correct.

7 Q. Had they made any other requests that LGBT sites be
8 unblocked prior to this litigation?

9 A. Not that I'm aware of.

10 Q. Prior to, at that time, or since that time, has any
11 student requested that a LGBT site be, student or parent, be
12 removed?

13 A. No.

14 Q. During that time, did you have a student ask if she
15 could have, they could start a gay, lesbian, straight, a
16 gay/straight club at Camdenon High School, were you contacted
17 about that?

18 A. I was.

19 Q. What was your response?

20 A. That we would need to treat that organization like we
21 would any other organization at Camdenon High School.

22 Q. So you have no problems with having a gay/straight
23 alliance club at Camdenon High School?

24 A. No.

25 MR. MICKES: That's all.

1 MR. BLOCK: No questions.

2 THE COURT: I want to make sure I understand. It's
3 the policy of the school district, then, to not make any
4 changes unless they're specifically requested to by site.

5 THE WITNESS: Are you talking any changes to the
6 filtering system?

7 THE COURT: If it came to your attention that the
8 program wasn't working in a way and a lot of websites were not
9 getting through that were not in the category that you were
10 concerned about, is it your position that until somebody asks
11 you to do something, you will not do something; or are you
12 independently looking at these things and making decisions as
13 to whether or not things should be opened up?

14 THE WITNESS: Normally the requests would come from
15 a student or a staff member, so, yes.

16 THE COURT: So absent that, you don't do anything.

17 THE WITNESS: It would be very rare, Your Honor.

18 THE COURT: Has it happened?

19 THE WITNESS: I think probably our technology
20 department would be better served to answer that question. To
21 my knowledge, I do not know if we've been doing that.

22 THE COURT: You're the policy maker.

23 THE WITNESS: I am the policy maker, yes, ma'am.

24 THE COURT: Any other questions?

25 MR. MICKES: Just one.

- - -

FURTHER REDIRECT EXAMINATION

By Mr. Mickes:

Q. You may not have been here when Mr. Cowen, or paying attention when Mr. Cowen talked about the number of new websites that come in on a weekly basis. He talked about that being hundreds of thousands.

Do you have any capacity in the staffing, whether you're the policy maker or not, to have, put eyes on hundreds of thousands every week to determine whether they should be opened or not?

A. Certainly not. I think we would be in more of the opening-internet-website business than the education-of-children business.

Q. Camdenton School District is a local public education association that's operated by a public board that's voted by the community?

A. Yes.

Q. Okay. And so when we respond to the community, when they request it open, we take a look at that. But is there any possible way you could look at hundreds of thousands of websites every week?

A. I do not believe so.

Q. Is there anything in your website -- we've been over this before, but it keeps coming up.

1 Is there anything in your customized process that
2 separates out LGBT websites for special treatment from any
3 other group?

4 A. No.

5 Q. Okay. So anybody that wants an LGBT site or any other
6 site that's closed opened, hits it and the popup, and within 24
7 hours it's open or they get a decision; is that correct?

8 A. That's correct. Plus there are hundreds, if not
9 thousands, of LGBT websites that are already opened.

10 Q. How many students at Camdenton High School?

11 A. Camdenton High School --

12 Q. Camdenton School District.

13 A. 4200.

14 Q. 4200. And how many employees?

15 A. About 650.

16 Q. So you have about 2000 people out there who are sources
17 if they want information that they can request it and it will
18 be processed through your policy which was recommended by the
19 Missouri School Board Association; is that correct?

20 A. That's correct.

21 MR. MICKES: I have nothing further.

22 THE COURT: Do you try to build efficiencies into
23 your system?

24 THE WITNESS: I believe we do, yes.

25 THE COURT: Any other questions?

1 MR. BLOCK: No, Your Honor.

2 THE COURT: You may step down.

3 THE WITNESS: Thank you.

4 THE COURT: All right. I have a criminal matter
5 that I need to take up now. You'll have to wait until I'm
6 finished with it. Court is in recess.

7 (A recess was taken from 11:40 a.m. to 11:56 a.m.)

8 THE COURT: I apologize for the delay. I believe
9 that the only thing left is argument?

10 MR. ROTHERT: Yes.

11 THE COURT: Plaintiffs may begin.

12 MR. BLOCK: Thank you, Your Honor. Before turning
13 to the merits, I just want to quickly put to rest this issue of
14 Jane Doe's standing.

15 It's important to emphasize that the defendants have
16 not found a single book censorship case saying that in order to
17 challenge censorship a student has to seek out the materials
18 before they were censored or has to request access to the
19 blocked information before challenging the censorship in court.

20 THE COURT: But does that assume that there is
21 censorship?

22 MR. BLOCK: Yes, it does.

23 THE COURT: In other words, that the intent of the
24 school district is to prevent students from having access to
25 this material.

1 MR. BLOCK: Yes, Your Honor, as a matter of the
2 merits. But as the matter of standing, the cases are really
3 striking that, for example, in the case versus Unified School
4 District --

5 THE COURT: I see what you're saying, that for
6 standing they don't have to show that.

7 MR. BLOCK: That's right. And, in fact, there are
8 examples of books being removed that had been on the library
9 shelves for ten years and never checked out once, but students
10 in the school district still had standing to challenge the
11 removal.

12 And the reason why that's the case and the reason
13 why there's no exhaustion requirement in these circumstances is
14 that restricting access itself imposes an unconstitutional
15 stigma on the ability to access fully protected ideas. And I
16 think the Eighth Circuit's decision in Pratt says this
17 extremely clearly.

18 The Eighth Circuit says, (quoted as read) "The
19 symbolic effect of removing these films from the curriculum is
20 more significant than the resulting limitation of access to the
21 story. The board has used its official power to perform an act
22 clearly indicating that the ideas contained in the film are
23 unacceptable and should not be discussed or considered. This
24 message is not lost on students, and its chilling effect is
25 obvious." And I think that has direct application to this

1 case.

2 THE COURT: But if they aren't removing it because
3 of content, if it's content neutral.

4 MR. BLOCK: Yes, Your Honor. So in terms of the
5 merits, the motivation of the school district is important, but
6 you don't need direct evidence of an admission that the
7 materials are being censored because of dislike of the ideas.

8 It turns out we have some direct evidence in this
9 case from Mr. Hadley (sic) reporting on the views of at least
10 one school member, but, you know, the cases are clear that you
11 can infer the unconstitutional intent based on the objective
12 circumstances.

13 And Pratt, again, is a great example. The school
14 board in Pratt gave no explanation for removing the films.
15 Some parents had complained, there was an open meeting, and the
16 school board took a vote. There was no other explanation at
17 all. And the court said that those facts were sufficient to
18 establish a prima facie case that the material was being
19 removed in order to suppress ideas.

20 THE COURT: But they have presented evidence that
21 it's not to suppress ideas.

22 MR. BLOCK: Well, I think we need to be clear. The
23 burden is on them. I think we have put forward enough
24 objective evidence to establish the prima facie case. The
25 burden is on them to then come forward with enough evidence to

1 show a substantial and reasonable reason for doing the
2 censorship. And if they're unable to meet that burden, then I
3 think --

4 THE COURT: But you're assuming censorship.

5 MR. BLOCK: Yes, I'm defining censorship as
6 motivated in part by desire to suppress the ideas contained in
7 the materials, yes. So I think that there's enough objective
8 evidence in this case in order for a reasonable fact finder to
9 make that inference. And that evidence -- I can list this off.

10 First of all, the clear facially obvious viewpoint
11 discrimination of this filter is itself powerful evidence that
12 the filter is doing what the school intends. A second piece of
13 powerful evidence --

14 THE COURT: Let me ask you a question. For you to
15 win, do I need to find that the school district, when they
16 implemented this system, intended to prevent access to a robust
17 selection of gay and lesbian websites?

18 MR. BLOCK: Absolutely not, Your Honor. If this
19 were a damages claim for censorship that occurred in the past,
20 then you may well have. This is a claim for injunctive relief
21 going forward.

22 The school's -- what's important now is the school's
23 state of mind in choosing to continue with this filtering
24 software without any rational reason for doing so. The only
25 reason the school has given is that they need to comply with

1 CIPA. That is the absolutely only reason. And the evidence is
2 uncontested that there are other ways to comply with CIPA and
3 that there are other filtering systems that do just as good or
4 a better job at complying with CIPA than this system does.

5 So it's a very fair inference to make that if the
6 only reason the school is giving for keeping this filtering
7 system is completely nonsensical, I'm at a loss as to what the
8 legitimate motivation could be.

9 THE COURT: What if they just don't want to do it
10 because you asked them to do it?

11 MR. BLOCK: I don't think that would be a legitimate
12 motivation. I don't think suppressing ideas to spite an
13 outside organization is a constitutional motivation.

14 And I think it's important that over and over in our
15 papers, and going back to the Complaint, we've said there's no
16 reason why the school can't use a viewpoint neutral system, and
17 they have never given any response to that. They over and over
18 again say CIPA, CIPA, CIPA, and that just does not justify the
19 viewpoint-based censorship in this case. Viewpoint censorship
20 is the cardinal sin of the First Amendment, and if you're going
21 to engage in that, you need a very good justification for doing
22 so.

23 THE COURT: Tell me your evidence of viewpoint bias.

24 MR. BLOCK: So in addition to the objective evidence
25 that I think is obvious from looking at the filter itself --

1 THE COURT: Wait a second. It's obvious -- you're
2 saying that Blacklist intentionally is doing this?

3 MR. BLOCK: I'm saying the school has intentionally
4 chosen to continue with a system that they know does this. And
5 I think that they're happy with it, and they would rather keep
6 it than fix it. And I think there's a lot of evidence that if
7 they try to fix it, they'd get some backlash from the
8 community, and that's very much informing their decisions here.

9 You had the local Tea Party swarm two consecutive
10 school board meetings demanding not only that this be censored,
11 but that if information is requested to be unblocked that the
12 parents be notified of that. And you had calls by the head of
13 that group to vote out these two school board members in an
14 upcoming election if their demands for parental notification
15 weren't accepted.

16 I also think that in some ways the amicus briefs
17 filed by ADF are good corroboration that this isn't haphazard
18 or random suppression of LGBT viewpoints. It aligns with a
19 pattern that many groups have advocated in the past that, a
20 pattern of wanting to suppress nonsexual LGBT content, such as
21 GLSTN or GSA Campaign or PFLAG, and to tar that content by
22 associating it with pornography.

23 And, you know, I think whatever the motivations of
24 the founders of URL Blacklist, they definitely made a
25 viewpoint-based decision that gay and lesbian and sexuality are

1 two categories that go together. And, you know, it could be,
2 whatever biases are motivating that decision, they're
3 definitely there. I don't think that -- it's unconstitutional
4 to act on those biases, whether or not you necessarily are
5 consciously aware that you're acting on it. They're making a
6 deliberate decision to lump these categories.

7 THE COURT: I may have missed this, but is there
8 evidence that heterosexual behavior is filtered out as well
9 from Blacklist.org, or is it just homosexuality that's put in a
10 sexuality context?

11 MR. BLOCK: Yes. The sexuality category of DMOZ
12 includes heterosexual practices. And they don't include
13 monogamous practices, they include stuff like swinging or other
14 fetishes or sort of, you know, alternative sexualities. And
15 those sort of alternative or subjectively deviant sexual
16 practices are grouped together with a separate category for gay
17 and lesbian.

18 THE COURT: Okay. You've lost me again, and perhaps
19 I didn't follow this. DMOZ is not Blacklist.

20 MR. BLOCK: That's correct.

21 THE COURT: DMOZ is a volunteer organization that
22 categorizes these things.

23 MR. BLOCK: Yes.

24 THE COURT: So my question was about Blacklist. How
25 does Blacklist deal with heterosexuality?

1 MR. BLOCK: So some heterosexual practices are
2 included in Blacklist's sexuality category if they were
3 included in DMOZ's sexuality category.

4 THE COURT: Oh, okay.

5 MR. BLOCK: There's also, you know, heterosexual
6 practices are included in pornography or sometimes in adult.
7 But I think, you know, the flaw here is saying the comparison
8 for PFLAG is a heterosexual sex website. The comparison for
9 PFLAG is Parents and Friends of Ex-Gays, and I think the
10 comparison is even starker when you get to LGBT religious
11 organizations like Dignity. I think it is -- and these are
12 listed in our --

13 THE COURT: So those sites are not blocked.

14 MR. BLOCK: Those sites are blocked in the sexuality
15 category. If you are an LGBT religious organization like
16 DignityUSA or Evangelicals Concerned or the other religious
17 organizations listed in our Complaint, you are not put in the
18 religion category if you are on Blacklist. You are, because
19 you advocate acceptance of LGBT people, you are put in the
20 sexuality category. So you can compare Dignity to Knights of
21 Columbus, which is all about what --

22 THE COURT: And what I was trying to figure out is
23 does Blacklist put Knights of Columbus in the nonsexual
24 category, even when they're talking about sexual issues?

25 MR. BLOCK: Absolutely. Sexual issues in terms of

1 are people born gay, is homosexuality a sin, is it a dangerous
2 lifestyle that's likely to cause you to get AIDS, you know, can
3 I change my sexual orientation, all of that is under religion.
4 And it's true for Family Research Council, it's true for
5 Knights of Columbus. And it also becomes stark in the context
6 of political campaigns. You could have websites for and
7 against specific issues, but the site that is anti, vote yes on
8 Prop 8 gets put in religion, and vote no on Prop 8 gets put in
9 LGBT. So I think it's an extremely stark example of viewpoint
10 discrimination.

11 And in terms of inferring intent, I think you would
12 expect if someone doesn't, isn't happy with that viewpoint
13 discrimination, you would expect that when they're alerted to
14 it, they would actually do something about it. You know,
15 the -- it was mentioned in the briefs that we've written
16 letters to other schools about sometimes the school has
17 misconfigured their filtering software. Like, for example,
18 Blue Coat has an LGBT category that's nonsexual, but some
19 schools have mistakenly activated it.

20 We've had dozens and dozens and dozens of schools
21 once they're contacted by us fix the problem. This is the only
22 school we've sued. And so this sort of adamant, I want to
23 continue this viewpoint discrimination in the face of all
24 common sense, actually, I think that is a powerful indicator of
25 unconstitutional motivation here.

1 Unless there are any other questions --

2 THE COURT: How do you address the issue that the
3 burden should be on the student or a third party to ask website
4 by website for it to be opened?

5 MR. BLOCK: Well, defendants themselves have said it
6 would be so burdensome to comb through URL Blacklist and find
7 accepting, LGBT-supportive websites. So it's too burdensome
8 for the school, but apparently it's not too burdensome for the
9 student? We're going to have a student, a 13-year-old or
10 14-year-old kid who is trying to find suicide resources comb
11 through it?

12 And their other response is, well, there are the
13 found 40 websites that have not yet been categorized by URL
14 Blacklist and, therefore, are not yet blocked by the sexuality
15 filter. And the idea that a student is supposed to continue
16 trying to click on sites until they stumble upon this site that
17 just happens to have slipped through I don't think cures the
18 burden either. Even if it did cure the burden, there's still
19 the unconstitutional stigma also.

20 In the Harry Potter book case, a student challenged
21 the parent notification requirement, even though that student
22 had her parents' written permission and could check out the
23 book anytime she wanted, but the court still said there's an
24 unconstitutional stigma here on fully protected ideas, and that
25 itself is a violation of the First Amendment.

1 THE COURT: Okay.

2 MR. BLOCK: If there are no further questions.

3 MR. MICKES: Thank you, Your Honor. I want to
4 address the standing issue first. In spite of the -- I thought
5 the statements directed from the bench that these cases that
6 were all cited were taking cases, they were censorship cases,
7 they were cases that were taken out of a library, they were
8 cases that were taken off a supplemental reading list.

9 This is not a taking case. There's no evidence
10 whatsoever that LGBT or anybody else's websites are blocked and
11 taken off and you can't access them in any way. In fact, the
12 evidence, even with the, even -- we had a list two pages long
13 of LGBT sites that are open. We had four sites, five sites
14 that were requested prior to the litigation to be unblocked.
15 One of those already unblocked.

16 THE COURT: So if you had, if you had 50 sites that
17 you could access Republican candidates and 200,000 that you
18 couldn't, are you saying that would not be censorship?

19 MR. MICKES: I think if the intent, if the intent
20 was to discriminate against a group because of their feelings,
21 I think you could make that argument, but there's no evidence
22 whatsoever of any intent to block lesbian and gay sites. In
23 fact, every one at the, every one that was brought up by the
24 ACLU was unblocked. There was a list two pages long of
25 unblocked.

1 Jane Doe didn't request that any site was unblocked.
2 In order to have standing, the law is pretty clear. It says
3 that Jane Doe has to have suffered an injury in fact, a
4 concrete and particularized, actual or imminent, not
5 conjectural or hypothetical. This is all conjectural or
6 hypothetical. She didn't do anything.

7 THE COURT: I don't want to -- I do want to
8 interrupt because otherwise I won't get my questions answered.

9 You were contacted about problems with the website,
10 about the use of Blacklist.

11 MR. MICKES: We were contacted about perceptions of
12 problems with the website.

13 THE COURT: Okay. You were contacted by
14 organizations --

15 MR. MICKES: The ACLU.

16 THE COURT: -- about a concern that whatever
17 filtering device you were using was discriminating of gay and
18 lesbian sites --

19 MR. MICKES: That's correct.

20 THE COURT: -- is that correct? And that was before
21 the lawsuit.

22 MR. MICKES: That was before the lawsuit.

23 THE COURT: So if you are aware of it and do nothing
24 about it, is that censorship? Is that sufficient evidence of
25 censorship to give standing? Because that would have occurred

1 before the lawsuit was filed.

2 MR. MICKES: It is not, and it's not for these
3 reasons, Your Honor.

4 THE COURT: Tell me why.

5 MR. MICKES: No. 1, they had four, five sites that
6 they requested. One was already unblocked before the request
7 came, four were unblocked after the request. Now, if we were
8 to say that --

9 THE COURT: Well, maybe I'm missing something. And
10 I'm concerned that I don't understand the facts. There were
11 letters asking to unblock certain sites.

12 MR. MICKES: Yes.

13 THE COURT: And that's what you've been talking
14 about.

15 MR. MICKES: Yes.

16 THE COURT: I thought that before the lawsuit, they
17 contacted you and said there was something wrong with
18 Blacklist, that Blacklist was operating in a way that
19 discriminated against gay and lesbian sites. Am I incorrect or
20 correct in that?

21 MR. MICKES: I think they certainly suggested that
22 we use different filtering systems. They did not like URL,
23 they felt it was discriminatory. But I would say this, Your
24 Honor.

25 THE COURT: And that occurred before the lawsuit was

1 filed.

2 MR. MICKES: That occurred before the lawsuit.

3 THE COURT: Okay.

4 MR. MICKES: And we took that under consideration.
5 They contacted legal counsel. We looked at the issues, we
6 talked to our technology people. We went through the
7 technology people, the technology people said, we believe with
8 our customized system there is no discrimination, every group
9 is treated the same. Just because the ACLU or some other
10 liberal group says, hey, you know, I don't like what you're
11 doing, you've got to change that and if we don't change it,
12 then somehow we're showing discrimination, that's not the law.
13 That would be crazy. And --

14 THE COURT: Unless the failure to change could be
15 interpreted as discrimination. Clearly just asking can't be
16 enough, but the failure -- what I'm trying to figure out is
17 what the legal test is for purposes of understanding.

18 MR. MICKES: If I have a group that says, I think
19 that you guys, you block recreational use of marijuana and it's
20 discriminatory and you need to take these sites down because
21 there are certain areas, certain parts of the country where
22 medicinal marijuana is legal and is used and we say we're not
23 going to do that, does that mean that we're censoring that,
24 illegally censoring? I guess censoring from just saying we're
25 not going to put it on, but that's not illegal censoring.

1 THE COURT: If it occurred before the lawsuit, then
2 the question is does the person have standing to even find out
3 whether legally you are censoring something.

4 MR. MICKES: Well, clearly this lawsuit was filed by
5 four website producers. That was before -- Jane Doe was a
6 last-minute add. And clearly corporations that purvey websites
7 have no standing at all because if they had standing, every
8 publisher that we don't use has standing to sue us, every
9 vendor that we don't use.

10 So there's no standing. The only standing that is
11 possible is Jane Doe. And Jane Doe is a last-minute add. I
12 wanted to take her deposition, and they said, oh, we'll
13 stipulate that she's never done, she's never made any requests,
14 she's never done this, she's never done anything. The law says
15 you have to have a particularized harm. And what the ACLU did
16 with their letter four or five months earlier doesn't change
17 fact one. It just doesn't. There's no standing in this case,
18 or hasn't been standing.

19 We were prepared to file a motion to dismiss because
20 the four purveyors of websites didn't have standing, and while
21 we were talking to the board, you know, we got, Jane Doe got
22 popped in. Then I tried to take her deposition to find out
23 what her harm was, and we get the stipulation that she's not
24 been harmed at all.

25 If you look at the standards about particularized

1 harm, you can't bootstrap that on the back of a letter that
2 ACLU sent. ACLU is very proud of it, every school district
3 that they sent this letter to caved in. Well, you know, I
4 guess that's something to be proud of if you belong to that
5 organization, but every --

6 THE COURT: What about this Harry Potter case? If,
7 in fact, the court were to conclude that there was evidence of
8 censorship prior to the filing of the lawsuit, how would you
9 distinguish the Harry Potter case?

10 MR. MICKES: I think the Harry Potter case is a
11 censorship case. I don't see this as a censorship case. They
12 haven't been denied access to anything. Any student --

13 THE COURT: I understand that, but that wasn't my
14 question. My question was, what if I found that it was a
15 discriminatory viewpoint-based censorship prior to the lawsuit,
16 would there then be standing?

17 MR. MICKES: No.

18 THE COURT: And why not?

19 MR. MICKES: Because there's not a particularized
20 harm --

21 THE COURT: How do you distinguish the Harry Potter
22 case?

23 MR. MICKES: There's not a particularized harm to
24 that particular student. She hasn't asked for access to Harry
25 Potter. She hasn't asked for access to anything.

1 THE COURT: So in the Harry Potter case, she had
2 asked for it --

3 MR. MICKES: It's my understanding, Your Honor.

4 THE COURT: -- and had been denied.

5 MR. MICKES: I'm not a Harry Potter fan, but that's
6 my understanding. In all the cases that were cited by counsel,
7 they were all great cases except that they were all taking
8 cases. This is not a taking case. Any student or any faculty
9 member can go online and hit any website that he or she wants.
10 And if it's blocked there's an immediate request. I would
11 suggest --

12 THE COURT: If you're assuming that that makes it
13 not censorship, that --

14 MR. MICKES: I firmly do.

15 THE COURT: -- would undermine -- don't interrupt
16 me. I only get to interrupt you. That would undermine your
17 standing argument.

18 MR. MICKES: I would say this, Your Honor. I think
19 that if -- the case that controls this case is the U.S. Supreme
20 Court, the American Library Association case. And Justice
21 Stevens -- I know it's dicta, but Justice Stevens was talking
22 about this very same issue. And he said if there is a process
23 in place to get review and get a prompt decision on that
24 blocked site, there's no case. That's what he said, and that's
25 what the Supreme Court said.

1 And this dealt with the Library Association, and
2 they didn't have a standing issue because they have a whole
3 bunch of individuals along with the Library Association.
4 That's a different case here, but the legal principles are
5 exactly the same.

6 THE COURT: So if I block all the Republican sites,
7 as well as someone can ask for permission to have access to a
8 Republican site, that doesn't make it censorship.

9 MR. MICKES: I think it makes it censorship, Your
10 Honor. And if that's what we were talking about here, I
11 wouldn't be standing here and arguing in front of you. We have
12 two pages of LGBT sites that are open, any student has the
13 ability. The scenario that I understand you to be setting for
14 me is that it's all Democrats or it's all Republicans and none
15 of the other and no matter what you do you can't get anything
16 up. There's no evidence of, there's no evidence at all of that
17 in this case.

18 After we got done with the standing argument,
19 everything that I heard after the standing argument was
20 conjecture about what counsel thought the facts were or thought
21 the testimony was. None of that was there any testimony on.
22 The two experts admitted they had no idea, never been to
23 Camden, had no idea how their system worked at all, but they
24 went on and talked about that. That testimony is minimally
25 valuable, but we went on and we talked about it as if, you

1 know, that's testimony and we just started making stuff up as
2 we wanted that wasn't, there was no testimony at all.

3 THE COURT: Is it correct that everything goes
4 through Blacklist.com before it goes to your -- assuming you
5 started from -- let me make sure I understand the facts.

6 When you first start, you have Blacklist.com.

7 MR. MICKES: Yes.

8 THE COURT: Then you develop independently a
9 blacklist and a whitelist that's customized based upon
10 inquiries that you have.

11 MR. MICKES: Yes.

12 THE COURT: Is that correct?

13 MR. MICKES: That is correct, Your Honor. That's my
14 understanding, anyway.

15 THE COURT: So until there's an inquiry, it's
16 blocked.

17 MR. MICKES: Right.

18 THE COURT: Okay.

19 MR. MICKES: And we have evidence that, Mr. Cowen
20 testified that there had been over 2000 inquiries, and 80
21 percent of those had been open.

22 THE COURT: How many come online every day or every
23 week?

24 MR. MICKES: He testified that several hundred
25 thousand, and that's the problem that we have. I am such a

1 technological disaster. I can't get on there. But I asked
2 him, I said, could you do this manually as they come on? And
3 he said, I would have to hire a couple hundred people, and
4 that's all they would do.

5 I am disappointed that the school district has been
6 attacked because when the ACLU sends a nasty letter they don't
7 cave in and do what they want them to do. They stand up and
8 say, you know, we're going to do what's right. And by God,
9 they do have a right to do that. They cite one board member.
10 Well, Your Honor knows there's seven board members, and I would
11 like to say out of the 300 districts that we work with, all
12 2100 are, you know, rocket scientists who always act
13 rationally, but that's not the case. But because one person
14 says something, it's one person's opinion, and until the board
15 acts it doesn't mean anything.

16 And the board did act. The board says, no, we're
17 not going to do, we're not going to require that before we open
18 the site we get parental permission, we're not going to do
19 that. So to hold Mr. Beckett up as some kind of boogeyman,
20 he's one person.

21 THE COURT: Do you have any legal things that you
22 want to talk about?

23 MR. MICKES: I thought I'd been doing that. I've
24 just kind of been voicing -- I apologize, Your Honor, but --
25 it's clearly, there's no standing here. If this was a, if

1 there was any evidence at all other than pure conjecture from
2 counsel in his closing argument that there was, we discriminate
3 against LGBTs, I asked that question. I was the only one that
4 asked that question. I asked it over and over and over and
5 over again. I got the same answer. All of the sides are
6 treated the same. And that's -- I appreciate your indulgence
7 in listening to me ramble. Thank you, Your Honor.

8 THE COURT: A minute.

9 MR. BLOCK: Okay. I'll just be very, very quick.
10 Just in addition to the viewpoint, I think you heard from
11 Mr. Mickes right here that I think the fact that this letter
12 came from the ACLU as opposed to another organization and
13 people find it politically convenient to say we're standing up
14 to the ACLU by censoring this material I think is additional
15 evidence of viewpoint.

16 THE COURT: I want to know from you, though,
17 prior -- if no letter had ever been sent, would Jane Doe or
18 anybody else have standing to challenge the school district?
19 And if so, what would be the basis?

20 MR. BLOCK: If the district had no knowledge of this
21 and it was occurring by accident, I think someone would have
22 standing. I think they would lose on the merits because it was
23 occurring by accident.

24 THE COURT: Why would they have standing? That's
25 what I'm trying to understand.

1 MR. BLOCK: Right. Well, you know, I think
2 obviously, the injury fact inquiry folds into standing. So I
3 think that to the extent that you can project ahead and say I'm
4 not going to find ultimately that there's no injury, then you
5 would be denied standing. The court could also view this as
6 more distinct inquiries. In terms of, in terms of there were
7 just two --

8 THE COURT: I guess, do you have to if you're a
9 student ask for it and be denied it before you have standing to
10 challenge the practice?

11 MR. BLOCK: Absolutely not. There's not a single
12 case involving book removals in which any student asked for it
13 and was denied it. The school just voted, we're taking away
14 this book. The idea that a student previously had to have made
15 a request and exhausted their remedies before the school
16 doesn't cure that, and it certainly doesn't cure the viewpoint
17 discrimination issue here.

18 THE COURT: What was the viewpoint discrimination if
19 nobody has ever asked them to do anything and they're not aware
20 that, in fact, it's filtering out gay and lesbian stuff? And
21 there's no evidence here that before you asked, there was any
22 evidence that they knew it was filtering out gay and lesbian
23 stuff.

24 MR. BLOCK: Right. So I think if someone, I don't
25 think there would be a claim if they had no idea this was

1 occurring. And so I guess the first student that filed, at
2 that time, you know, filed a complaint and says this is
3 occurring, you know, there would have been no claim for
4 retrospective relief whatsoever. I think the next day or the
5 next week or the next month when the next student files and
6 they're on notice about it, if they continue to do it going
7 forward, there is a claim for injunctive relief at that point.

8 THE COURT: All right. Anything else?

9 MR. BLOCK: No, that's okay, Your Honor. Thanks.

10 MR. MICKES: I just have one thing, Your Honor. The
11 ACLU may not be my favorite organization, but to say that
12 that's evidence, because somebody doesn't agree with the ACLU
13 that's evidence of discrimination, and the comparison I made
14 was that we get letters from groups, school districts get
15 letters from groups all the time. They have to sift through
16 those letters and make the decisions that they think are
17 appropriate for their community with the assistance of counsel.
18 And that's all that happened here, and the fact that the letter
19 came from the ACLU and not the John Birch Society doesn't make
20 any difference at all. That's the way we treat it. Thanks,
21 Your Honor.

22 THE COURT: Have you all tried to settle your case?
23 Have you thought that maybe you could go through some kind of
24 mediation process and try to get your case settled? Would that
25 be helpful to the parties?

1 MR. MICKES: Well, Your Honor, we did offer to, if
2 there were specific sites that were a problem, we would unblock
3 those. If there are groups of sites, we'll unblock groups of
4 sites. Yeah, that's fine.

5 THE COURT: So if, for example, this DMOZ, dmoz.org,
6 you would be willing to unblock all of the sites that are
7 listed under society and gay and lesbian?

8 MR. MICKES: It certainly is a suggestion. The
9 superintendent is sitting right here. We'll certainly look at
10 that, Your Honor.

11 THE COURT: But would it be helpful for you to work
12 with a mediator to talk with that?

13 MR. MICKES: I don't -- with all due respect, Your
14 Honor, I've been doing this a long time. I don't think so. I
15 mediate most of my cases. I really don't think so. I think
16 this is something the district has to work through. And I
17 think they have a good system, and I think there's ways,
18 there's ways that they can improve the system, and I think
19 they're certainly willing to do that.

20 But I would with due respect ask you to carefully
21 consider the American Library Association Supreme Court case
22 that deals with this.

23 THE COURT: We will consider all the law. Court's
24 in recess.

25 (Hearing adjourned.)

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CERTIFICATE

I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled matter.

November 14, 2011

/s/ _____
Kathleen M. Wirt, RDR, CRR
U.S. Court Reporter